

TITLE 2. ELECTIONS

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CHAPTER 11 [OLD]

VOTER REGISTRATION

REPEALED. L 1970, c 26, §3.

CHAPTER 11 [NEW]

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Attorney General Opinions

County charter providing for nonpartisan election of prosecutor does not conflict with this chapter. Att. Gen. Op. 85-7.

PART I. GENERAL PROVISIONS

§11-1 Definitions. Whenever used in this title, the words and phrases in this title shall, unless the same is inconsistent with the context, be construed as follows:

"Ballot", a ballot including an absentee ballot is a written or printed, or partly written and partly printed paper or papers containing the names of persons to be voted for, the office to be filled, and the questions or issues to be voted on. A ballot may consist of one or more cards or pieces of paper, or one face of a card or piece of paper, or a portion of the face of a card or piece of paper, depending on the number of offices, candidates to be elected thereto, questions or issues to be voted on, and the voting system in use. It shall also include the face of the mechanical voting machine when arranged with cardboard or other material within the ballot frames, containing the names of the candidates and questions to be voted on.

"Chief election officer", the individual appointed by the elections commission pursuant to section 11-1.6 to supervise state elections.

"Clerk", the county clerks of the respective counties.

"County", the counties of Hawaii, Maui, Kauai, and the city and county of Honolulu, as the context may require. For the purposes of this title, the county of Kalawao shall be deemed to be included in the county of Maui.

"Election", all elections, primary, special primary, general, special general, special, or county, unless otherwise specifically stated.

"Election officials", precinct officials and other persons designated as officials by the chief election officer.

"Hawaiian", any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.

"Office", an elective public office.

"Political party" or "party", a political party qualified under part V of this chapter.

"Precinct", the smallest political subdivision established by law.

"Primary", a preliminary election in which the voters nominate candidates for office as provided for in chapter 12.

"Runoff election" means any single election required by county charters preceded by an election that failed to elect a candidate.

"Service bureau" means a firm registered to do business in the State and whose principal business is furnishing data processing services.

"Special election", any single election required by law when not preceded by an election to nominate those candidates whose names appear on the special election ballot.

"Special primary election" and "special general election", elections held only (a) whenever any vacancy occurs in the offices of United States senator, United States representative, state senator, or state representative because of failure to elect a person at an uncontested general election or (b) as specified in county charters.

"Voter", any person duly registered to vote.

"Voter turnout", means the total number of voters at an election as determined by the number of ballot cards tabulated by the computer or of paper ballots counted by the precinct officials. When there is more than one ballot card issued to each voter, "voter turnout" means the total count of the alpha ballot card with the highest number of cards tabulated by the computer. Ballots that are blank or ballots that are rejected for any reason shall be included in the count of the total number of voters.

"Voting system", the use of paper ballots, electronic ballot cards, voting machines, or any system by which votes are cast and counted. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(a); am L 1979, c 196, §3; am L 1980, c 264, §1(a); am L 1987, c 232, §1; am L 1990, c 156, §4; am L Sp 1995, c 27, §§3, 15; am L 1996, c 239, §1; am L 1998, c 22, §1; am L 1999, c 141, §§3, 4; am L 2004, c 57, §7]

§11-1.5 Office of elections established. (a) There is established an office of elections to provide support to the chief election officer. The office shall be placed within the department of accounting and general services for administrative purposes. The chief election officer shall be the administrator of the office of elections. Except for exercising the right to vote, the full-time employees of the office of elections shall not support, advocate, or aid in the election or defeat of any candidate for public office.

(b) The office of elections shall provide staff support to the elections commission, as requested by the elections commission. [L Sp 1995, c 27, pt of §2, §15; am L 1999, c 141, §§3, 5; am L 2003, c 117, §2; am L 2004, c 57, §8]

§11-1.6 Appointment of the chief election officer; requirements; term; restrictions; salary; reappointment; removal. (a) The chief election officer shall be appointed by the elections commission, without regard to chapter 76. The appointment shall not be subject to the advice and consent of the senate. In the event of a vacancy, the elections commission shall meet expeditiously to select and appoint a new chief election officer to serve the remainder of the unexpired term.

(b) The person appointed to be chief election officer shall be a citizen of the United States, a resident of the State, and a registered voter of the State.

(c) The chief election officer shall serve for a term of four years. The term shall begin on February 1 following the appointment.

(d) The chief election officer shall devote full time to the duties of the office and shall hold no other public office during the individual's term of office. Except for exercising the right to vote, the individual shall not support, advocate, or aid in the election or defeat of any candidate for public office. The chief election officer shall refrain from financial and business dealings that tend to reflect adversely on the individual's impartiality, interfere with the proper performance of election duties, or exploit the individual's position. Subject to the requirements above, the individual may hold and manage investments, including real estate, and engage in other remunerative activity, but shall not serve as an officer, director, manager, advisor, or employee of any business.

(e) The chief election officer shall be paid a salary not to exceed eighty-seven per cent of the salary of the director of human resources development.

(f) The chief election officer may petition the elections commission for reappointment. The elections commission may reappoint an incumbent chief election officer based on the performance of the chief election officer. The elections commission may authorize the chief election officer to hold office until a successor is appointed.

(g) The chief election officer may be removed by the elections commission at any time for good cause. [L Sp 1995, c 27, pt of §2, §15; am L 1999, c 141, §§3, 6; am L 2000, c 253, §150; am L 2002, c 16, §1; am L 2003, c 117, §1; am L 2004, c 57, §9; am L 2005, c 226, §2]

[§11-1.55] Exemptions. The office of elections shall be exempt from section [26-35(a)(1), (4), and (5)] and shall:

- (1) Make direct communications with the governor and legislature;
- (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the office of elections without the approval of the comptroller; and
- (3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

The office of elections shall follow all applicable personnel laws. [L 2004, c 57, §2]

§11-2 Chief election officer; duties. (a) The chief election officer shall supervise all state elections. The chief election officer may delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons.

(b) The chief election officer shall be responsible for the maximization of registration of eligible electors throughout the State. In maximizing registration, the chief election officer shall make an effort to equalize registration between districts, with particular effort in those districts in which the chief election officer determines registration is lower than desirable. The chief election officer, in carrying out this function, may make surveys, carry on house-to-house canvassing, and assist or direct the clerk in any other area of registration.

(c) The chief election officer shall maintain data concerning registered voters, elections, apportionment, and districting. The chief election officer shall use this data to assist the reapportionment commission provided for under Article IV of the Constitution.

(d) The chief election officer shall be responsible for public education with respect to voter registration and information.

(e) The chief election officer shall adopt rules governing elections in accordance with chapter 91. [L 1970, c 26, pt of §2; am L 1979, c 51, §5; gen ch 1985; am L 1990, c 116, §2; am L Sp 1995, c 27, §§4, 15; am L 1996, c 173, §§2, 3, 8; am L 1997, c 2, §17; am L 1999, c 141, §3; am L 2003, c 8, §2]

Cross References

Reapportionment commission, see chapter 25.

Law Journals and Reviews

A History of Recent Reapportionment in Hawaii. 22 HBJ 171.

§§11-2.5 to 2.7 REPEALED. L 2004, c 57, §§10 to 12.

Note

Transfer of functions, duties, etc. L 2004, c 57, §§14, 15.

[§11-2.6] Elections appointment and review panel; political activities. (a) No panel member shall take an active part in political management or in political campaigns.

(b) Each panel member shall retain the right to:

(1) Register and vote as the panel member chooses in any election;

(2) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(3) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(4) Make a financial contribution to a political party or organization;

(5) Serve as an election judge or clerk or in a similar position to perform nonpartisan election duties as prescribed by law; and

(6) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the panel member's efficiency or integrity as a panel member or the neutrality, efficiency, or integrity of the elections appointment and review panel.

(c) A panel member may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics or this section. [L Sp 1995, c 27, pt of §2, §15; am L 1999, c 141, §§3, 8]

[§11-2.7] Elections review program. The elections appointment and review panel shall develop and implement an elections review program, the purposes of which shall be to:

(1) Establish performance standards for the operation of elections and the performance of the chief election officer. The performance standards shall provide the criteria by which the operation of elections and the performance of the chief election officer will be evaluated;

(2) Review the operation of elections and the performance of the chief election officer;

(3) Make recommendations to the chief election officer on methods to improve the operation of elections;

- (4) Establish policies for the administration of an elections observer program, to include ensuring the validity and reliability of election results;
- (5) Conduct a biennial performance evaluation of the operation of elections and the performance of the chief election officer;
- (6) Submit the findings and recommendations from the biennial performance evaluation to the legislature, not less than twenty days prior to the convening of each regular session held in odd-numbered years; and
- (7) Adopt rules in accordance with chapter 91 to carry out the purposes of this section. [L 1999, c 141, §2]

§11-3 Application of chapter. This chapter shall apply to all elections, primary, special primary, general, special general, special, or county, held in the State, under all voting systems used within the State, so far as applicable and not inconsistent herewith. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(b)]

§11-4 Rules and regulations. The chief election officer may make, amend, and repeal such rules and regulations governing elections held under this title, election procedures, and the selection, establishment, use, and operation of all voting systems now in use or to be adopted in the State, and all other similar matters relating thereto as in the chief election officer's judgment shall be necessary to carry out this title.

In making, amending, and repealing rules and regulations for voters who cannot vote at the polls in person and all other voters, the chief election officer shall provide for voting by such persons in such manner as to insure secrecy of the ballot and to preclude tampering with the ballots of these voters and other election frauds. Such rules and regulations, when adopted in conformity with chapter 91 and upon approval by the governor, shall have the force and effect of law. [L 1970, c 26, pt of §2; gen ch 1985]

Case Notes

Election officer not authorized to promulgate rule prohibiting poll watchers from recording the names of those who have voted. 54 H. 254, 506 P.2d 13.

§11-5 Employees. (a) Pursuant to section 11-1.55, the chief election officer may employ a staff with or without regard to chapter 76 at the discretion of the chief election officer, and without regard to chapter 89 and section 28-8.3. The office of elections staff may:

- (1) Supervise state elections;
- (2) Maximize registration of eligible voters throughout the State;
- (3) Maintain data concerning registered voters, elections, apportionment, and districting; and
- (4) Perform other duties as prescribed by law.

The chief election officer or county clerk may employ precinct officials and other election employees as the chief election officer or county clerk may find necessary, none of whom shall be subject to chapters 76 and 89.

(b) Notwithstanding chapters 103 and 103D, the chief election officer may contract with community organizations, school booster clubs, and nonprofit organizations for the provision and compensation of precinct officials and other election related personnel, services, and activities; provided that to be eligible to enter into a contract, the organization or club shall have received a tax clearance certificate from the department of taxation and shall not be a political action committee or organized for a political purpose. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(c); am L 1977, c 199, §2; gen ch 1985; am L 1995, c 71, §1; am L Sp 1995, c 27, §§5, 15; am L 1999, c 141, §3; am L 2000, c 253, §150; am L 2004, c 57, §3; am L 2005, c 201, §1 and c 202, §2]

[§11-6] Petitions; withdrawal of signatures. Wherever in this chapter the signatures of registered voters are required on a petition, any voter who, after signing a petition, seeks to withdraw the voter's signature may do so by providing notice in writing to the chief election officer any time before the filing of the petition. The notice shall include the name, social security number, address, and birthdate of the voter and must be signed by the voter with the name under which the voter is registered to vote. Upon receipt of that notice containing the information required by this section, the chief election officer shall notify the group or individual to whom the petition was issued and the signature of the individual shall not be counted. [L 1993, c 304, §1]

[§11-7] Elections commission. (a) There is established an elections commission within the department of accounting and general services for administrative purposes. The elections commission shall consist of nine members who shall be selected as follows:

- (1) The president of the senate shall select two elections commission members;
- (2) The speaker of the house of representatives shall select two elections commission members;
- (3) The senators belonging to a party or parties different from the president of the senate shall designate one senator to select two elections commission members;

(4) The representatives belonging to a party or parties different from the speaker of the house of representatives shall designate one representative to select two elections commission members; and

(5) One member, who shall serve as chairperson of the elections commission, shall be selected by the members of the elections commission selected pursuant to paragraphs (1) to (4);

provided that each group of four elections commission members selected by each house shall include one elections commission member from each of the four counties.

(b) The chairperson of the elections commission under subsection (a)(5) shall be selected by a two-thirds vote.

(c) A vacancy in the elections commission shall be filled in the same manner as the original appointment as specified in subsection (a) within fifteen days. A vacancy in the elections commission shall be filled with a person from the same county as the departing elections commission member. Elections commission member vacancies not filled within the times specified shall be filled promptly thereafter by the chief justice of the supreme court.

(d) The elections commission shall act by majority vote of its membership and shall establish its own procedures, except as may be provided by law.

(e) Notwithstanding section 26-34, elections commission member appointments shall not be subject to senatorial confirmation.

(f) The term of the elections commissioners shall be four years, except that with respect to the terms of the initial elections commission members, one member selected from each of subsection (a)(1) to (4) shall serve for a term of two years.

(g) The elections commissioners shall serve without compensation, but shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties. [L 2004, c 57, pt of §6]

[§11-7.5] Duties of the elections commission. The duties of the elections commission are to:

(1) Hold public hearings;

(2) Investigate and hold hearings for receiving evidence of any violations and complaints;

(3) Adopt rules pursuant to chapter 91;

(4) Employ, without regard to chapter 76, a full-time chief election officer, pursuant to section 11-1.6; and

(5) Advise the chief election officer on matters relating to elections. [L 2004, c 57, pt of §6]

[§11-8] Elections commission; political activities. (a) No elections commission member shall take an active part in political management or in political campaigns.

(b) Each elections commission member shall retain the right to:

(1) Register and vote as the elections commission member chooses in any election;

(2) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(3) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(4) Make a financial contribution to a political party or organization;

(5) Serve as an election judge or clerk or in a similar position to perform nonpartisan election duties, as prescribed by law; and

(6) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the elections commission member's efficiency or integrity as an elections commission member or the neutrality, efficiency, or integrity of the elections commission.

(c) An elections commission member may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics or this section. [L 2004, c 57, pt of §6]

[§11-8.5] Elections review program. The elections commission shall develop and implement an elections review program to:

(1) Review the operation and performance of elections;

(2) Make recommendations to the chief election officer on methods to improve elections;

(3) Establish policies for the administration of an elections observer program, to include ensuring the validity and reliability of election results;

(4) Conduct a biennial evaluation of the operation of elections;

(5) Submit the findings and recommendations from the biennial evaluation to the legislature, not less than twenty days prior to the convening of each regular session held in odd-numbered years; and

(6) Adopt rules in accordance with chapter 91 to carry out the purposes of this section. [L 2004, c 57, pt of §6]

[§11-9] Exemptions. The elections commission shall be exempt from section [26-35(a)(1), (4), and (5)] and shall:

(1) Make direct communications with the governor and legislature;

(2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the elections commission without the approval of the comptroller; and

(3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

The elections commission shall follow all applicable personnel laws. [L 2004, c 57, pt of §6]

PART II. REGISTRATION

§11-11 Registration. A person who registers as required by law shall be entitled to vote at any election provided that the person shall have attained the age of eighteen at the time of that election. The county clerk shall be responsible for voter registration in the respective counties and the keeping of the general register and precinct lists within the county. [L 1970, c 26, pt of §2; am L 1976, c 106, §1(1); gen ch 1985]

§11-12 Age; place of registering. (a) Every person who has reached the age of eighteen years or who is seventeen years of age and will be eighteen years of age by the date of the next election, and is otherwise qualified to register may do so for that election. The person shall then be listed upon the appropriate county general register and precinct list. No person shall register or vote in any other precinct than that in which the person resides except as provided in section 11-21.

(b) A person who is otherwise qualified to register and is at least sixteen years of age but will not be eighteen years of age by the date of the next election may preregister upon satisfactory proof of age and shall be automatically registered upon reaching age eighteen. [L 1970, c 26, pt of §2; am L 1972, c 77, §1; am L 1973, c 217, §1(d); am L 1976, c 106, §1(2); am L 1980, c 264, §1(b); gen ch 1985; am L 1993, c 24, §1]

§11-13 Rules for determining residency. For the purpose of this title, there can be only one residence for an individual, but in determining residency, a person may treat oneself separate from the person's spouse. The following rules shall determine residency for election purposes only:

- (1) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return;
- (2) A person does not gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct;
- (3) If a person resides with the person's family in one place, and does business in another, the former is the person's place of residence; but any person having a family, who establishes the person's dwelling place other than with the person's family, with the intention of remaining there shall be considered a resident where the person has established such dwelling place;
- (4) The mere intention to acquire a new residence without physical presence at such place, does not establish residency, neither does mere physical presence without the concurrent present intention to establish such place as the person's residence;
- (5) A person does not gain or lose a residence solely by reason of the person's presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison;
- (6) No member of the armed forces of the United States, the member's spouse or the member's dependent is a resident of this State solely by reason of being stationed in the State;
- (7) A person loses the person's residence in this State if the person votes in an election held in another state by absentee ballot or in person.

In case of question, final determination of residence shall be made by the clerk, subject to appeal to the board of registration under part III of this chapter. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(1); am L 1977, c 189, §1(1); gen ch 1985]

Attorney General Opinions

Residency of person living temporarily out-of-district. Att. Gen. Op. 86-10.

§11-14 General county register; restrictions in use. (a) The clerk of each county shall register all the voters in the clerk's county in the general county register. The register shall contain the name and address of each voter unless the voter's address is deemed confidential pursuant to section 11-14.5. Additional information required by section 11-15 may be included in the register at the discretion of the clerk. The voter's name shall be maintained alphabetically in the register and be capable of segregation by precinct and representative district. The clerk shall keep the original or photographic copy of the affidavit of registration required by section 11-15. The general county register shall be available for election or government purposes only in accordance with section 11-97.

(b) The affidavits filed under section 11-15 and the general county register may be copied, and the clerk may release voter lists and tabulating cards or computer tapes containing data furnished in the affidavit; provided that information furnished in the affidavits, register, voter lists, cards, or tapes, shall be copied or released for election or government purposes only in accordance with section 11-97.

(c) Voter registration information that is collected and maintained by the clerk of each county may be transmitted to a central file for the purpose of correlating registration data to prevent or detect duplicate voter registrations and for the compilation of election reports.

(d) The clerk of each county shall maintain records by computer tape or otherwise of office of Hawaiian affairs registered voters to facilitate their identification as a separate category of voters.

(e) Unless authorized under section 11-97, it shall be unlawful for any person to use, print, publish, or distribute any voter registration information acquired directly or indirectly from the voter registration affidavits or any list prepared therefrom. Any person who is designated by the clerk to register voters and collect voter registration affidavits shall be advised of the provisions of this subsection. Any person who violates this subsection shall be guilty of a misdemeanor. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(e); am L 1976, c 106, §1(3); am L 1977, c 189, §1(2); am L 1979, c 139, §2; am L 1982, c 226, §2; gen ch 1985; am L 1990, c 156, §5; am L 1998, c 23, §1; am L 2005, c 201, §2]

Cross References

Public records, see chapter 92F.

Records open to inspection, see §11-97.

§11-14.5 Residence address; confidentiality. (a) If a life threatening circumstance exists to:

- (1) A law enforcement person;
- (2) The law enforcement person's family; or
- (3) Persons otherwise determined by the clerk of the county in which the person is registered,

that person may apply to the county clerk in writing to keep confidential the information relating to the residence address and telephone number contained in the affidavit of registration of that person, or any list or register prepared therefrom.

(b) If the disclosure of the residence address or telephone number of a person would result in an unwarranted invasion of personal privacy or expose the person or a member of the person's family to risk of bodily harm, the person may apply to the chief election officer or county clerk to keep confidential the person's residence address and telephone number contained in the person's affidavit of registration, or any list or register prepared therefrom.

(c) Upon good cause shown, the clerk shall determine whether to grant confidentiality in accordance with rules established by the chief election officer, and that decision shall be final.

(d) If the voter registration of a person covered by this section is challenged, the clerk shall release the residence address of that person to the challenger pursuant to rules established by the chief election officer. If an appeal is taken relating to the challenge, the residence address shall also be released to the appropriate appellate body. [L 1990, c 156, §2; am L 1997, c 157, §1]

§11-14.6 REPEALED. L 1997, c 157, §3.

§11-15 Application to register. (a) Any person qualified to and desiring to register as a voter in any county shall make and subscribe to an application in the form of an affidavit.

The affidavit shall contain the following information:

- (1) Name;
- (2) Social security number;
- (3) Date of birth;
- (4) Residence, including mailing address;

(5) That the residence stated in the affidavit is not simply because of the person's presence in the State but that the residence was acquired with the intent to make Hawaii the person's legal residence with all the accompanying obligations therein;

(6) That the person is a citizen.

(b) Any person qualified to and desiring to register as a voter for the election of members of the board of trustees of the office of Hawaiian affairs shall make and subscribe to an application in the form of an affidavit which shall state that the person is Hawaiian and which shall contain the information required under subsection (a). The affidavit shall also apply to all elections, primary, special primary, general, special general, special, or county, held in the State, under all voting systems used within the State, so far as applicable and not inconsistent with this title.

(c) The applicant shall swear to the truth of the allegations by self-subscribing oath in the affidavit on application for voter registration or other form prescribed by the chief election officer. Unless contested by a qualified voter, the clerk may accept, as prima facie evidence, the allegation of the applicant in information required in the affidavit in subsection (a)(5), and the allegation of the applicant that the applicant is Hawaiian required in subsection (b). In any other case where the clerk shall so desire or believe the same to be expedient, the clerk may demand that the applicant furnish substantiating evidence to the allegations of the applicant's application.

(d) The applicant shall then affix the applicant's signature to the affidavit. In the case where an applicant is unable to write for the reason of illiteracy, blindness, or other physical disability the applicant's mark shall be witnessed by another person who shall sign the affidavit in the space provided. A voter having once been registered shall not be required to register again for any succeeding election, except as provided in this chapter. Affidavits approved by the clerk shall thereupon be numbered appropriately, filed by the clerk and kept available for election or government purposes in accordance with procedures established by section 11-97.

(e) The clerk may designate a subordinate or subordinates to act in the clerk's place and stead in all matters covered by this section, except that no candidate shall be eligible to serve as a subordinate. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(f); am L 1974, c 34, §1(a); am L 1976, c 106, §1(4); am L 1979, c 196, §4; am L 1981, c 107, §1 and c 195, §1; gen ch 1985; am L 1989, c 111, §1; am L 1990, c 45, §§2, 3 and c 156, §6; am L 1998, c 23, §2]

Attorney General Opinions

Clerk may deputize 17-year olds as voter registrars, there being no statute imposing age requirement. Att. Gen. Op. 72-2.

Case Notes

Indictment of section dismissed because did not allege challenge by a qualified voter or that defendant had information contrary to that contained in voter registration affidavits. 67 H. 398, 688 P.2d 1152.

Preclearance under Voting Rights Act not prerequisite for enforcement of this section. 68 H. 516, 722 P.2d 453.

[§11-15.5] Duties of all state agencies; voter registration. Each state agency that deals with the public shall make available to each member of the public eighteen years of age or older an application in the form of an affidavit for voter registration pursuant to section 11-15. The application shall be available by mail or in person depending on the manner in which the agency's services are requested by the person. The form of the application may be identical to that described and found in public telephone directories. [L 1993, c 100, §1]

Cross References

Election services, provisions, and charges, see §16-3.

§11-16 Application when not made in person. (a) Any qualified person unable for any cause to present oneself in person before the clerk for registration may register to vote by mail, not later than thirty days prior to a primary or general election, through the affidavit on application for voter registration or other form prescribed by the chief election officer. The form shall include a self-subscribing oath for the applicant to swear to the truth of the allegations in the application. An applicant unable to write for reason of illiteracy, blindness, or other physical disability shall have the applicant's mark witnessed by a person who shall sign the affidavit in the space provided. Application forms shall be made available to any qualified person through community groups, political parties, and other groups prescribed by the chief election officer. Application forms shall be made available to any qualified person at the time of that person's driver's license application or renewal through the examiner of drivers.

(b) Upon receipt of the properly executed application, the clerk shall proceed to number the same and register the name of the voter in the general county register as provided in section 11-15. In registering persons under this section the clerk may accept requests for absentee ballot submitted in accordance with the Federal Voting Assistance Act of 1955 or other similar federal law as being sufficient for registration purposes. [L 1970, c 26, pt of §2; gen ch 1985; am L 1990, c 45, §4]

§11-17 Removal of names from register, when; reregistration. (a) The clerk, not later than 4:30 p.m. on the sixtieth day after every general election, shall remove the name of any registered voter who did not vote in that general election, and also did not vote in the primary election preceding that general election, and also did not vote in the previous general election, and also did not vote in the primary election preceding that general election, and also did not vote in the regularly scheduled special elections held in conjunction with those primary and general elections, if any, with the exception of:

(1) Those who submitted written requests for absentee ballots as provided in section 15-4; or

(2) Anyone who preregistered pursuant to section 11-12(b).

If a person voted, at least once, in any of the above-mentioned elections, the person's name shall remain on the list of registered voters. For this purpose "vote" means the depositing of the ballot in the ballot box whether the ballot is blank or later rejected for any reason. In the case of voting machines "vote" means the voter has activated the proper mechanism and fed the vote into the machine.

(b) The clerk shall also identify or remove the name of any registered voter, if the clerk, after mailing a notice or other correspondence, properly addressed, with postage prepaid, receives the notice or other correspondence as return mail with a postal notation that the notice or other correspondence was not deliverable. On election day, any person identified or removed shall have the person's name corrected or restored in the register and shall be allowed to vote if the person completes an affidavit or other form prescribed by the chief election officer affirming that the person: claims the person's legal residence at the address listed on the register; changed the person's legal residence after the closing of the register for that election; or, moved to a new residence within the same precinct as the person's residence as listed on the register.

(c) The clerk may remove the name of any registered voter, if the voter so desires and properly notifies the clerk pursuant to the procedures established by the chief election officer.

(d) Any person whose name has been removed from the register, at any time prior to the closing of the register, as provided in section 11-24, may have that person's name restored in the register by presenting oneself to the clerk and reregistering pursuant to section 11-15, or by making application by mail or otherwise pursuant to procedures established by the clerk. The clerk shall require satisfactory evidence to establish the

identity of the applicant. The names of all those persons shall be reentered in the register. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(g); am L 1975, c 36, §1(3); am L 1976, c 106, §1(5); am L 1981, c 195, §2; am L 1982, c 226, §1; am L 1983, c 124, §1; am L 1987, c 273, §1; am L 1990, c 45, §5 and c 134, §2; am L 1993, c 24, §2; am L 1994, c 119, §1]

§11-18 Transfer of registration on removal from one precinct to another in same county. A registered voter who changes residence from one precinct to another prior to any election shall notify the clerk and change the registration to the proper precinct by the appropriate registration deadline; provided that no change of registration shall be allowed if the change of residence occurs after the close of registration for an election except pursuant to section 11-21(c). The change of registration due to a change of residence may be challenged as provided in section 11-25. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(h); am L 1985, c 203, §1; am L 1987, c 273, §2; am L 1992, c 129, §1]

§11-19 Registration from one county to another. Whenever a registered voter changes residence from one county to another, the person shall notify the clerk and change the registration to the proper county by the appropriate registration deadline; provided that no change of registration shall be allowed after the close of registration for an election except pursuant to section 11-21(c). Thereupon, if the person applying is legally qualified to register, the clerk shall accept the registration and shall immediately thereafter forward to the clerk of the county in which the person was formerly registered, a notice that the name of the registered voter is to be removed from the general county register of that county. [L 1970, c 26, pt of §2; am L 1972, c 77, §2; am L 1973, c 217, §1(i); gen ch 1985; am L 1987, c 273, §3; am L 1992, c 129, §2]

Attorney General Opinions

Except in the situation specified in section, voter who moves from one county to another may reregister in second county, so long as register is open. Att. Gen. Op. 70-16.

§11-20 Transfers; name changes; initiated by clerk. (a) The clerks shall use all reliable and pertinent information to keep the general register up to date. The county clerks may request information from, but are not limited to, the following sources:

- (1) The office of the lieutenant governor for any change of name;
- (2) Courts for any changes of name, divorces, separations, or other changes affecting voter status;

(3) The department of health for marriages, deaths, or other changes affecting voter status;

(4) Utility companies concerning commencement or changes of service;

(5) Residential apartments, cooperative apartments, and condominiums as to changes of occupancy.

In requesting the information the clerk shall give reasonable notice and time for furnishing the information.

(b) If the clerk has evidence indicating that a voter's registration should be transferred, the clerk shall notify the person by first-class mail of the intent to transfer registration. The notification shall include:

(1) Any evidence that the clerk may have indicating why a transfer or change should be made;

(2) The residence, precinct, and district of the voter according to current registration lists;

(3) Any alleged new address, precinct, and district;

(4) A reply form which shall contain a space for the voter's agreement or objection to the transfer, the reasons for the objection and space for the voter's signature;

(5) Notice that unless the completed form is returned not later than 4:30 p.m. on the fifteenth day after mailing, the transfer shall be processed.

(c) A voter may contest the transfer on or before election day by presenting evidence that the voter actually resides at the old address which, if found valid by the clerk or the board of registration, shall entitle the voter to be returned to the old voting list.

(d) Notwithstanding section 11-24, the clerk may, at any time, transfer a voter's registration when notice of a change of address is received by registration affidavit or other form or means approved by the chief election officer. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(j); am L 1984, c 64, §1; am L 1994, c 119, §2]

§11-21 Change of name, transfer on election day. (a) The county clerk may designate a registration clerk, who may be an election official, at any of the polling places in the county on the day of the election.

(b) These registration clerks shall take applications for change of name from voters who have been married or who have had their names changed since the last election.

(c) Any person whose name appears on the registered voters list whose residence has changed since the last election, and whom the county clerk has not transferred under section 11-20, may apply on a form prescribed by the chief elections officer at the person's new polling place on the day of the election for transfer of registration to the precinct of the new residence. Any person so transferring voter registration shall be immediately added to the register of the new precinct and may vote only at the new precinct.

(d) Where a person was incorrectly placed on a list of voters of a precinct in which the person does not actually reside, the person may correct the registration.

(e) No person shall be prevented from voting at the election in the precinct in which the person's name appears on the voters list due to a change of name, or other correction made under this section. However, any voter registered in the wrong precinct who shall refuse to make the correction of registration may be challenged in accordance with section 11-25.

(f) Any person changing name or transferring shall receive a copy of the change or transfer form. [L 1970, c 26, pt of §2; am L 1972, c 77, §3; am L 1984, c 64, §2; am L 1985, c 203, §2; am L 1987, c 273, §4; am L 1992, c 129, §§3, 4]

§11-22 Changing register; correction of errors. (a) The clerk shall correct the register if at any time it shall be manifest to the clerk that the name of a person registered has been accidentally misspelled, or that the person has been misnamed therein, or that the person has been accidentally registered under the wrong precinct, or that the person was accidentally removed pursuant to section 11-17(a), or that the name of the person should be corrected or restored pursuant to section 11-17(b).

(b) In any case where the clerk refuses to correct the register the person may appeal to the board of registration and the register shall be changed upon a written order of the board of registration, setting forth the reasons for the change. The order shall be directed to the clerk or to the precinct officials of the election precinct where the voter is entitled to vote if the register has been closed. The precinct officials shall thereupon correct the list of voters furnished them according to the terms of the order, noting on the list the reasons for the correction, and shall send the original order to the clerk as soon as may be possible after the close of the polls. The clerk, upon receipt of any order from the board of registration or from the precinct officials, as the case may be, shall correct the register according to the terms of the order, making on the register a reference to the order. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(k); gen ch 1985; am L 1990, c 45, §6]

§11-23 Changing register; striking names of disqualified voters. (a) Whenever the clerk receives from the department of health or any informing agency, information of the death, loss of voting rights of a person sentenced for a felony as provided in section 831-2, adjudication as an incapacitated person under the provisions of chapter 560, loss of citizenship, or any other disqualification to vote, of any person registered to vote in that county, or who the clerk has reason to believe may be registered to vote therein, the clerk

shall thereupon make such investigation as may be necessary to prove or disprove the information, giving the person concerned, if available, notice and an opportunity to be heard. If after the investigation the clerk finds that the person is dead, or incapacitated to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning voting, or has lost voting rights pursuant to section 831-2, or has lost citizenship, or is disqualified for any other reason to vote, the clerk shall remove the name of the person from the register.

(b) The clerk shall make and keep an index of all information furnished to the clerk under any requirements of law concerning any of the matters in this section. Whenever any person applies to register as a voter, the clerk shall, before registering the person, consult the index for the purpose of ascertaining whether or not the person is in any manner disqualified to vote. Any person whose name is removed from the register of voters under this section may appeal in the manner provided by sections 11-26 and 11-51, and such proceedings shall be had upon the appeal as in other appeals under these sections. [L 1970, c 26, pt of §2; am L 1980, c 198, §1; am L 1983, c 34, §1; am L 2002, c 15, §2]

Note

Chapter 333 referred to in text is repealed.

§11-24 Closing register; list of voters. (a) At 4:30 p.m. on the thirtieth day prior to each primary, special primary, or special election (but if the day is a Saturday, Sunday, or holiday then at 4:30 p.m. on the first working day immediately thereafter), the general county register shall be closed to registration for persons seeking to vote at the primary, special primary or special election and remain closed to registration until after the election, subject to change only as provided in sections 11-21(c), 11-22, 11-25, 11-26, and this section.

(b) Notwithstanding the closing of the register for registration to vote at the primary or special primary election, the register shall remain open for the registration of persons seeking to vote at the general or special general election, until 4:30 p.m. on the thirtieth day prior to the general or special general election (but if the day is a Saturday, Sunday, or holiday then at 4:30 p.m. on the first working day immediately thereafter), at the end of which period the general county register shall be closed to registration and remain closed until after the general or special general election next following, subject to change only as provided in sections 11-21(c), 11-22, 11-25, and 11-26.

(c) Immediately upon the closing of the general county register, the clerk shall proceed to prepare a list of all registered voters in each precinct, separately. The list shall contain, in alphabetical order, without designation of the race or age of voters, the names

of all voters so registered in each precinct, and the residence of each unless such residence is deemed confidential pursuant to section 11-14.5. The list shall be available for inspection at the office of the county clerk prior to election day. On election day the precinct officials shall post the list at the precinct polling place. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(1); am L 1976, c 106, §1(6); am L 1977, c 189, §1(3); am L 1979, c 139, §3; am L 1990, c 156, §7; am L 1992, c 129, §5]

§11-25 Challenge by voters; grounds; procedure. (a) Challenging prior to election day. Any registered voter may challenge the right of a person to be or to remain registered as a voter in any precinct for any cause not previously decided by the board of registration or the supreme court in respect to the same person; provided that in an election of members of the board of trustees of the office of Hawaiian affairs the voter making the challenge must be registered to vote in that election. The challenge shall be in writing, setting forth the grounds upon which it is based, and be signed by the person making the challenge. The challenge shall be delivered to the clerk who shall forthwith serve notice thereof on the person challenged. The clerk shall, as soon as possible, investigate and rule on the challenge.

(b) Challenging on election day. Any voter rightfully in the polling place may challenge the right to vote of any person who comes to the precinct officials for voting purposes. The challenge shall be on the grounds that the voter is not the person the voter alleges to be, or that the voter is not entitled to vote in that precinct; provided that only in an election of members of the board of trustees of the office of Hawaiian affairs, a person registered to vote in that election may also challenge on the grounds that the voter is not Hawaiian. No other or further challenge shall be allowed. Any person thus challenged shall first be given the opportunity to make the relevant correction pursuant to section 11-21. The challenge shall be considered and decided immediately by the precinct officials and the ruling shall be announced.

(c) If neither the challenger nor the challenged voter shall appeal the ruling of the clerk or the precinct officials, then the voter shall either be allowed to vote or be prevented from voting in accordance with the ruling. If an appeal is taken to the board of registration, the challenged voter shall be allowed to vote; provided that ballot is placed in a sealed envelope to be later counted or rejected in accordance with the ruling on appeal. The chief election officer shall adopt rules in accordance with chapter 91 to safeguard the secrecy of the challenged voter's ballot. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(m); am L 1979, c 139, §4 and c 196, §5; am L 1980, c 137, §1; am L 1985, c 203, §3]

§11-26 Appeal from ruling on challenge; or failure of clerk to act. (a) In cases where the clerk, or precinct officials, rules on a challenge on election day, the person ruled against may appeal from the ruling to the board of registration of the person's county for review under part III. The appeal shall be brought before the challenger and challenged party leave the polling place. If an appeal is brought, both the challenger and the challenged voter may be parties to the appeal.

(b) In cases where the clerk rules on a challenge, prior to election day, or refuses to register an applicant, or refuses to change the register under section 11-22, the person ruled against may appeal from the ruling to the board of registration of the person's county. The appeal shall be brought within ten days of service of the adverse decision. Service of the decision shall be made personally or by registered mail, which shall be deemed complete upon deposit in the mails, postage prepaid, and addressed to the aggrieved person's last known address. If an appeal from a decision on a challenge prior to election day is brought, both the challenger and the challenged voter may be parties to the appeal.

(c) If the appeal is sustained, the board shall immediately certify that finding to the clerk, who shall thereupon alter the register to correspond to the findings of the board, and when necessary, the clerk shall notify the precinct officials of the change in the register. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(n); am L 1980, c 264, §1(c); gen ch 1985; am L 1990, c 45, §7]

PART III. BOARDS OF REGISTRATION

§11-41 Boards of registration, appointment, tenure. (a) There shall be four boards of registration: one for the island of Hawaii; one for the islands of Maui, Molokai, Lanai, and Kahoolawe; one for the island of Oahu; and one for the islands of Kauai and Niihau. The boards, which shall be in the department of accounting and general services for administrative purposes, shall consist of three members each and shall be appointed by the governor by and with the advice and consent of the senate; their terms of office shall be four years.

(b) In no case shall any board consist entirely of members of one political party.

(c) The several boards of registration shall sit in the county seats of their respective counties on election day. The boards shall also sit at such other times as the clerk determines within the various representative districts in their respective counties to hear appeals, provided there are any, from the voters registered within such districts. The boards shall continue their sittings until all appeals have been heard.

(d) Reasonable notices of the sitting of the boards shall be given in their respective districts or counties. [L 1970, c 26, pt of §2; am L 1980, c 264, §1(d); am L 1983, c 34, §2; am L 1998, c 2, §3; am L 2005, c 199, §1]

Note

Transfer of functions, etc. L 2005, c 199, §2.

§11-42 Compensation. Members of the boards of registration shall be compensated pursuant to a schedule established by the chief election officer. The schedule shall be contained in rules adopted pursuant to chapter 91. [L 1970, c 26, pt of §2; am L 1979, c 133, §1; am L 1987, c 210, §1; am L 1998, c 56, §1]

Cross References

Precinct officials' compensation, see §11-76.

§11-43 Powers; procedures. (a) Each board of registration is given all of the powers and authority for the summoning and examining of witnesses and the maintenance of order, including the power to punish for contempt and award witness fees in accordance with section 621-7, by law given to circuit courts.

(b) Every member of the board of registration may administer oaths in all cases in which oaths are by law authorized.

(c) The procedures for challenges and appeals under sections 11-25 and 11-26 and this part shall be exempt from the provisions of chapter 91 regarding contested case hearings, but shall be administered according to rules adopted by the chief election officer. [L 1970, c 26, pt of §2; am L 1990, c 45, §8]

§11-44 Records of proceedings. The several boards of registration shall each keep books of record in which full and detailed minutes shall be preserved of all their proceedings. The minutes shall be kept from day to day, and shall contain:

- (1) The date and place of the meeting;
- (2) The names of the members of the board present;
- (3) The name of each person to whom an oath is administered, and, if an examination is held, the names of the witnesses and the substance of the answers of the applicant and of the witnesses;

(4) The name of any person challenging the right of any applicant to register, the grounds of challenge, the name of the person challenged, and the decision rendered thereon; and

(5) All other matters of detail which are likely to have a bearing upon any question concerning the action of the board or of any person appearing before it. [L 1970, c 26, pt of §2]

PART IV. APPEAL FROM BOARD OF REGISTRATION

Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCP rule 81(b)(10); appeal to supreme court, see Hawaii Rules of Appellate Procedure.

§11-51 Appeal from board. *[2004 amendment repealed June 30, 2010. L 2006, c 94, §1.]* Any affected person, political party, or any of the county clerks, may appeal to the intermediate appellate court, subject to chapter 602, in the manner provided for civil appeals from the circuit court; provided that the appeal is brought no later than 4:30 p.m. on the tenth day after the board serves its written decision, including findings of fact and conclusions of law, upon the appellant. This written decision of the board shall be a final appealable order. The board shall not consider motions for reconsideration. Service upon the appellant shall be made personally or by registered mail, which shall be deemed complete upon deposit in the mails, postage prepaid, and addressed to the appellant's last known address. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(o); am L 1979, c 111, §25; am L 1990, c 45, §9; am L 2004, c 202, §1]

Note

L 2004, c 202, §82 provides:

"SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice's sole discretion, directs."

§11-52 Hearing; decision final. *[2004 amendment repealed June 30, 2010. L 2006, c 94, §1.]* When the appeal is perfected, the court shall hear the appeal as soon thereafter as may be reasonable. [L 1970, c 26, pt of §2; am L 2004, c 202, §2]

Note

L 2004, c 202, §82 provides:

"SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice's sole discretion, directs."

§11-53 Decision, notice; action on. *[2004 amendment repealed June 30, 2010. L 2006, c 94, §1.]* Immediately upon rendering a final decision upon any appeal, the court shall notify the board of registration from which the appeal was taken; and if the decision reverses the decision of the board, the board shall immediately order the register to be corrected to conform with the decision. [L 1970, c 26, pt of §2; am L 2004, c 202, §3]

Note

L 2004, c 202, §82 provides:

"SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice's sole discretion, directs."

§11-54 Status pending appeal. *[2004 amendment repealed June 30, 2010. L 2006, c 94, §1.]* In case of an appeal from a decision of any board of registration the name of the person shall be placed or remain upon the register pending the decision of the appellate courts concerning the same. If the person so registered votes at any election before the appeal is decided and acted upon, the ballot of such voter shall be handled in accordance with section 11-25(c). [L 1970, c 26, pt of §2; am L 2004, c 202, §4]

Note

L 2004, c 202, §82 provides:

"SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice's sole discretion, directs."

PART V. PARTIES

Case Notes

State's prohibition on write-in voting, as part of electoral scheme providing constitutionally sufficient ballot access, does not impose unconstitutional burden on voters' rights under First and Fourteenth Amendments. 504 U.S. 428.

§11-61 "Political party" defined. (a) The term "political party" means any party which has qualified as a political party under sections 11-62 and 11-64 and has not been disqualified by this section. A political party shall be an association of voters united for the purpose of promoting a common political end or carrying out a particular line of political policy and which maintains a general organization throughout the State, including a regularly constituted central committee and county committees in each county other than Kalawao.

(b) Any party which does not meet the following requirements or the requirements set forth in sections 11-62 to 11-64, shall be subject to disqualification:

(1) A party must have had candidates running for election at the last general election for any of the offices listed in paragraph (2) whose terms had expired. This does not include those offices which were vacant because the incumbent had died or resigned before the end of the incumbent's term; and

(2) The party received at least ten per cent of all votes cast:

(A) For any of the offices voted upon by all the voters in the State; or

(B) In at least fifty per cent of the congressional districts; or

(3) The party received at least four per cent of all the votes cast for all the offices of state senator statewide; or

(4) The party received at least four per cent of all the votes cast for all the offices of state representative statewide; or

(5) The party received at least two per cent of all the votes cast for all the offices of state senate and all the offices of state representative combined statewide. [L 1970, c 26, pt of §2; am L 1979, c 125, §3(1); am L 1983, c 34, §3; am L 1986, c 323, §1; am L 1997, c 287, §1; am L 1999, c 205, §1]

Attorney General Opinions

"All votes cast" in determining the qualification of a political party does not include blank ballots. Att. Gen. Op. 81-6.

Change of party name. Att. Gen. Op. 82-1.

§11-62 Qualification of political parties; petition. (a) Any group of persons hereafter desiring to qualify as a political party for election ballot purposes in the State shall file with the chief election officer a petition as provided in this section. The petition for qualification as a political party shall:

(1) Be filed not later than 4:30 p.m. on the one hundred seventieth day prior to the next primary;

(2) Declare as concisely as may be the intention of signers thereof to qualify as a statewide political party in the State and state the name of the new party;

(3) Contain the name, signature, residence address, date of birth, and other information as determined by the chief election officer of currently registered voters comprising not less than one-tenth of one per cent of the total registered voters of the State as of the last preceding general election;

(4) Be accompanied by the names and addresses of the officers of the central committee and of the respective county committees of the political party and by the party rules; and

(5) Be upon the form prescribed and provided by the chief election officer.

(b) The petition shall be subject to hearing under chapter 91, if any objections are raised by the chief election officer or any other political party. All objections shall be

made not later than 4:30 p.m. on the twentieth business day after the petition has been filed. The chief election officer may extend the objection period up to an additional ten business days, if the group of persons desiring to qualify as a political party is provided with notice of extension and the reasons therefor. If no objections are raised by 4:30 p.m. on the twentieth business day, or the extension thereof, the petition shall be approved. If an objection is raised, a decision shall be rendered not later than 4:30 p.m. on the thirtieth day after filing of the objection or not later than 4:30 p.m. on the one hundredth day prior to the primary, whichever shall first occur.

(c) The chief election officer may check the names of any persons on the petition to see that they are registered voters and may check the validity of their signatures. The petition shall be public information upon filing.

(d) Each group of persons desiring to qualify as a political party, having first qualified as a political party by petition under this section, and having been qualified as a political party for three consecutive general elections by petition or pursuant to section 11-61(b), shall be deemed a political party for the following ten-year period. The ten-year period shall begin with the next regularly scheduled general election; provided that each party qualified under this section shall continue to field candidates for public office during the ten-year period following qualification. After each ten-year period, the party qualified under this section shall either remain qualified under the standards set forth in section 11-61, or requalify under this section 11-62. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(p); am L 1983, c 34, §4; am L 1986, c 323, §2; am L 1993, c 304, §4; am L 1997, c 287, §2; am L 1998, c 33, §1; am L 1999, c 205, §2]

§11-63 Party rules, amendments to be filed. All parties must file their rules with the chief election officer not later than 4:30 p.m. on the one hundred fiftieth day prior to the next primary. All amendments shall be filed with the chief election officer not later than 4:30 p.m. on the thirtieth day after their adoption. The rules and amendments shall be duly certified to by an authorized officer of the party and upon filing, the rules and amendments thereto shall be a public record. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(q); am L 1983, c 34, §5; am L 1986, c 323, §3]

§11-64 Names of party officers to be filed. All parties shall submit to the chief election officer and the respective county clerks not later than 4:30 p.m. on the ninetieth day prior to the next primary, a list of names and addresses of officers of the central committee and of the respective county committees. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(r); am L 1983, c 34, §6]

§11-65 Determination of party disqualification; notice of disqualification. (a) Not later than 4:30 p.m. on the one hundred twentieth day after a general election, the chief election officer shall determine which parties were qualified to participate in the last general election, but which have become disqualified to participate in the forthcoming

elections. Notice of intention to disqualify shall be served by certified or registered mail on the chairperson of the state central committee or in the absence of the chairperson, any officer of the central committee of the party, as shown by the records of the chief election officer. In addition, public notice of intention to disqualify shall also be given.

(b) If an officer of the party whose name is on file with the chief election officer desires a hearing on the notice of intention to disqualify, the officer of the party shall, not later than 4:30 p.m. on the tenth day after service by mail or not later than 4:30 p.m. on the tenth day after the last day upon which the public notice is given in any county, whichever is later, file an affidavit with the chief election officer setting forth facts showing the reasons why the party should not be disqualified. The chief election officer shall call a hearing not later than twenty days following receipt of the affidavit. The chief election officer shall notify by certified or registered mail the officer of the party who filed the affidavit of the date, time, and place of the hearing. In addition, public notice of the hearing shall be given not later than five days prior to the day of the hearing. The chief election officer shall render the chief election officer's decision not later than 4:30 p.m. on the seventh day following the hearing. If the party does not file the affidavit within the time specified, the notice of intention to disqualify shall constitute final disqualification. A party thus disqualified shall have the right to requalify as a new party by following the procedures of section 11-62. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(5); am L 1977, c 189, §1(4); gen ch 1985, 1993; am L 1998, c 2, §4]

PART VI. PRECINCT OFFICIALS AND WATCHERS

§11-71 Precinct officials; precinct requirements. There shall be not less than three precinct officials for each precinct one of whom shall be the chairperson; provided that in precincts where more than one voting unit has been established, there shall be three precinct officials for each unit. The chairperson of precinct officials shall have authority in all units of the precinct.

In all precincts, the chief election officer may assign additional precinct officials, at least one of whom may be designated a voter assistance official.

So far as reasonably practicable, excepting the chairperson, not more than fifty per cent of the precinct officials in any precinct shall be of the same political party. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(t); am L 1977, c 151, §1; gen ch 1993]

§11-72 Precinct officials; submission of names and assignment; vacancies. (a) All qualified political parties shall submit names for precinct officials to the chief election officer not later than 4:30 p.m. on the sixtieth day prior to the close of filing for any primary, special primary, or special election. All precinct officials shall be able to read and write the English language. If any party fails to submit the required names by the above deadline, or names sufficient to fill the positions to which it would be entitled,

assignment of positions to which the party would otherwise be entitled pursuant to subsection (b), may be made without regard to party affiliation.

(b) In assigning the precinct officials, the following criteria shall be followed:

(1) The precinct officials shall be registered voters of the precinct in which they serve; but if qualified persons in the precinct or representative district are not readily available to serve, they may be chosen from without the precinct or representative district, or if qualified persons either in or without the precinct or representative district are not available to serve, the chief election officer may designate precinct officials who are not registered voters if the persons so designated are otherwise qualified and shall have attained the age of sixteen years on or before June 30, of the year of the election in which they are appointed to work;

(2) The chief election officer may designate more precinct officials than are needed in order to create a pool of qualified precinct officials who may be assigned to fill vacancies or to perform their duties as needed in any precinct;

(3) No parent, spouse, reciprocal beneficiary, child, or sibling of a candidate shall be eligible to serve as a precinct official in any precinct in which votes may be cast for the candidate; nor shall any candidate for any elective office be eligible to serve as a precinct official in the same election in which the person is a candidate. No candidate who failed to be nominated in the primary or special primary election shall be eligible to serve as a precinct official in the general election next following; and

(4) The chairperson of the precinct officials shall be the first named precinct official on the list prepared by the chief election officer. The remainder of the precinct officials shall be apportioned as follows:

(A) The total votes cast, except those cast for nonpartisan candidates, for all of the following offices that were on the ballot in the next preceding general election shall be divided into the total votes cast for all the candidates of each party for these offices: president and vice-president, United States senator, United States representative, governor and lieutenant governor, state senator, and state representative;

(B) If a party's proportion of votes cast exceeds fifty per cent, its share shall be one-half of the precinct officials. The remaining one-half shall be divided among the remaining parties in proportion to their respective total of votes cast for the offices set forth in subparagraph (A);

(C) In the case of the above division resulting in parties having fractional positions, a whole position shall go to the party with the larger number of votes cast; and

(D) Newly qualified parties may be assigned up to ten per cent of the total positions available at the discretion of the chief election officer.

(c) In the recruitment and placement of precinct officials, any or all of the requirements of subsection (b) may be waived by the chief election officer if it is determined that minority language assistance or other special needs warrant such waiver, except as provided in subsection (b)(3).

(d) In case of inability, failure, or refusal of any person so assigned to serve as a precinct official, the chief election officer shall appoint a person to fill the vacancy. [L 1970, c 26, pt of §2; am L 1972, c 77, §4; am L 1973, c 217, §1(u); am L 1977, c 189, §1(5); am L 1979, c 125, §3(2) and c 139, §5; am L 1987, c 209, §1; am L 1988, c 141, §1; am L 1989, c 261, §24; am L 1990, c 124, §2; gen ch 1992; am L 1995, c 71, §2; am L 2005, c 14, §2 and c 201, §3]

§11-73 Instruction of precinct officials. Prior to any election, the chief election officer or clerk in county elections shall conduct a school of instruction, if deemed necessary, for persons designated as prospective precinct officials of precincts. They shall notify the precinct officials of the time and the place of the school of instruction.

All prospective precinct officials shall attend a school of instruction. The chairperson of the precinct officials shall be required to also attend a refresher course before each election. It shall be at the discretion of the chief election officer or the county clerk in county elections to require those precinct officials with previous training to attend a school of instruction prior to each election.

No precinct official shall serve unless the official has received instruction and has been certified by the authorized instructor to that effect. This section shall not prevent the assignment of a person who has not received such instruction or such certificate but who is otherwise qualified, to fill a vacancy among precinct officials when a qualified certified person is not available. Periodic recertification shall be required. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(v); am L 1979, c 133, §2; gen ch 1985, 1993]

§11-74 Meetings of precinct officials; procedure; oaths. The chairperson of the precinct officials shall preside at all meetings of the precinct officials. Any decision of the precinct officials shall require a majority vote of the precinct officials in the unit or precinct.

In all cases under this title, where duties are to be performed by the chairperson of the precinct officials, the duties may be performed by one of the other precinct officials, whenever the chairperson is temporarily absent or is otherwise for the time being unable to perform the duties.

Each precinct official may administer any oath in this title provided to be administered by the precinct officials. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(w); gen ch 1993]

§11-75 Duties of precinct officials. The duties of the precinct officials shall vary with the voting system in use in the precinct. The duties for the particular system shall be assigned by the chief election officer by regulations adopted for such purpose. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(x)]

§11-76 Compensation. (a) Electronic ballot and voting machine elections. Precinct officials and related election day nonprofit groups or employees shall be compensated pursuant to a schedule established by the chief election officer. The schedule shall be contained in rules adopted pursuant to chapter 91.

(b) Paper ballot elections. The chairperson of the precinct officials and the precinct officials shall receive the same base amounts as in subsection (a). In addition, all precinct officials shall be paid \$5 for each three hundred ballots or portion thereof cast at that precinct. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(y); am L 1974, c 19, §1; am L 1977, c 151, §2; am L 1982, c 145, §1; am L 1989, c 155, §1; gen ch 1993; am L 1995, c 71, §3]

§11-77 Appointment of watchers; service. (a) Each qualified political party shall be entitled to appoint no more than one watcher who may be present at any time in each precinct and absentee polling place in which the candidates of that political party are on the ballot. Each party shall submit its list of watchers not later than 4:30 p.m. on the tenth day prior to any election to the chief election officer or to the clerk in county elections. All watchers shall serve without expense to the State or county. All watchers so appointed shall be registered voters. No person shall serve as a watcher who could not qualify to serve as a precinct official under section [11-72(b)(3)].

(b) Each watcher shall be provided with identification from the chief election officer, or by the clerk in the case of county elections, stating the watcher's name and the name of the party the watcher represents. On election day the watcher shall present identification to the chairperson of precinct officials of the precinct or precincts where the watcher is to serve.

(c) All watchers for precincts shall be permitted to observe the conduct of the election in the precinct. The watchers may remain in the precinct as long as the precinct is in operation subject to section 19-6. Watchers may review the polling book pursuant to section 11-97.

(d) The watcher shall call the attention of the chairperson to any violations of the election laws that the watcher observes. After the chairperson's attention is called to the violation the chairperson shall make an attempt to correct such violation. If the chairperson fails to correct the violation, the watcher may appeal to the clerk of the county.

(e) The watchers shall be permitted to observe the operations of the absentee polling place. Any violation of the election laws shall be reported to the clerk. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(z); am L 1977, c 189, §1(6); am L 1983, c 34, §7; am L 2005, c 201, §4]

Case Notes

Under authority to observe the conduct of the election, poll watchers may record the names of those who have voted. 54 H. 254, 506 P.2d 13.

PART VII. CONDUCT OF ELECTIONS

§11-91 Proclamation. Not later than 4:30 p.m. on the tenth day prior to the close of filing in elections involving state offices the chief election officer shall issue an election proclamation. In elections involving only county offices the clerk shall issue the proclamation. In elections involving both state and county offices the proclamation may be issued jointly.

The proclamation shall contain a statement of the time and places where, and the purposes for which, the election is to be held, and a designation of the offices and the terms thereof for which candidates are to be nominated or elected. It may also contain any other relevant matter including an offer of rewards for the detection and conviction of offenders against the election laws. The chief election officer or clerk shall cause the election proclamation to be published at least once in a newspaper of general circulation and not later than on the tenth day prior to the close of filing. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(aa)]

Case Notes

Nothing in section grants to chief election officer any substantive power to call special election to fill vacancy in Senate resulting from death of candidate. 52 H. 410, 477 P.2d 625.

[§11-91.5] Federal, state, and county elections by mail. (a) Any federal, state, or county election held other than on the date of a regularly scheduled primary or general election may be conducted by mail.

(b) The chief election officer shall determine whether a federal or state election, other than a regularly scheduled primary or general election, may be conducted by mail or at polling places.

(c) The county clerk shall determine whether a county election, held other than on the date of a regularly scheduled primary or general election, may be conducted by mail or at polling places. An election by mail in the county shall be under the supervision of the county clerk.

(d) The chief election officer shall adopt rules pursuant to chapter 91 to provide for uniformity in the conduct of federal, state, and county elections by mail. [L 2003, c 37, §1]

Revision Note

Section was enacted as an addition to part IX but is renumbered to this part pursuant to §23G-15(1).

§11-92 REPEALED. L 1983, c 34, §8.

§11-92.1 Election proclamation; establishment of a new precinct. (a) The chief election officer shall issue a proclamation whenever a new precinct is established in any representative district. The chief election officer shall provide a suitable polling place for each precinct. Schools, recreational halls, park facilities, and other publicly owned or controlled buildings, whenever possible and convenient, shall be used as polling places. The chief election officer shall make arrangements for the rental or erection of suitable shelter for this purpose whenever public buildings are not available and shall cause these polling places to be equipped with the necessary facilities for lighting, ventilation, and equipment needed for elections on any island. This proclamation may be issued jointly with the proclamation required in section 11-91.

(b) No change shall be made in the boundaries of any precinct later than 4:30 p.m. on the tenth day prior to the close of filing for an election.

(c) Notwithstanding subsection (a), and pursuant to section 15-2.5, the chief election officer is not required to establish polling places for precincts affected by natural

disasters, as provided in section 15-2.5. [L 1983, c 34, §9; am L 1984, c 39, §1; am L 1996, c 215, §2]

§11-92.2 Multiple polling place sites. (a) The chief election officer may establish multiple polling place sites for contiguous precincts, notwithstanding district boundaries, when it is convenient and readily accessible for the voters of the precincts involved.

(b) No multiple polling place site shall be established later than 4:30 p.m. on the tenth day prior to the close of filing for an election. [L 1983, c 34, §10; am L 1984, c 39, §2]

§11-92.3 Consolidated precincts; natural disasters; postponement; absentee voting required; special elections. (a) In the event of a flood, tsunami, earthquake, volcanic eruption, high wind, or other natural disaster, occurring prior to an election, that makes a precinct inaccessible, the chief election officer or county clerk in the case of county elections may consolidate precincts within a representative district. If the extent of damage caused by any natural disaster is such that the ability of voters, in any precinct, district, or county, to exercise their right to vote is substantially impaired, the chief election officer or county clerk in the case of county elections may require the registered voters of the affected precinct to vote by absentee ballot pursuant to section 15-2.5 and may postpone the conducting of an election in the affected precinct for no more than twenty-one days; provided that any such postponement shall not affect the conduct of the election, tabulation, or distribution of results for those precincts, districts, or counties not designated for postponement. The chief election officer or county clerk in the case of county elections shall give notice of the consolidation, postponement, or requirement to vote by absentee ballot, in the affected county or precinct prior to the opening of the precinct polling place by whatever possible news or broadcast media are available. Precinct officials and workers affected by any consolidation shall not forfeit their pay.

(b) In the event the chief election officer or the county clerk in a county election determines that the number of candidates or issues on the ballot in a special, special primary, or special general election does not require the full number of established precincts, the precincts may be consolidated for the purposes of the special, special primary, or special general election into a small number of special, special primary, or special general election precincts.

A special, special primary, or special general election precinct shall be considered the same as an established precinct for all purposes, including precinct official requirements provided in section 11-71. Not later than 4:30 p.m. on the tenth day prior to the special, special primary, or special general election, the chief election officer or the county clerk shall give public notice, in the area in which the special, special primary, or special general election is to be held, of the special, special primary, or special general election precincts and their polling places. Notices of the consolidation also shall be posted on election day at the established precinct polling places, giving the location of the special,

special primary, or special general election precinct polling place. [L 1983, c 34, §11; am L 1993, c 304, §5; am L 1996, c 215, §3; am L 1998, c 2, §5]

§11-93 Voting units. Immediately after the close of registration of voters preceding any election, the chief election officer shall establish one or more voting units in each precinct polling place. All voting units shall be in the same precinct polling place. In a precinct having more than one voting unit the chief election officer or the officer's authorized representative shall designate each unit by a uniform identification system. The clerk in preparing the list of registered voters shall divide the list, on an alphabetical basis, as equal as possible between or among the voting units. [L 1970, c 26, pt of §2; am L 1979, c 133, §3; gen ch 1985]

§11-94 Exemptions of voters on election day. Every voter shall be privileged from arrest on election day while at the voter's polling place and in going to and returning therefrom, except in case of breach of the peace then committed, or in case of treason or felony. [L 1970, c 26, pt of §2; gen ch 1985]

§11-95 Employees entitled to leave on election day for voting. (a) Any voter shall on the day of the election be entitled to be absent from any service or employment in which such voter is then engaged or employed for a period of not more than two hours (excluding any lunch or rest periods) between the time of opening and closing the polls to allow two consecutive hours in which to vote. Such voter shall not because of such absence be liable to any penalty, nor shall there be any rescheduling of normal hours or any deduction made, on account of the absence from any usual salary or wages; provided that the foregoing shall not be applicable to any employee whose hours of employment are such that the employee has a period of two consecutive hours (excluding any lunch or rest periods) between the time of opening and closing the polls when the employee is not working for the employer. If, however, any employee fails to vote after taking time off for that purpose the employer, upon verification of that fact, may make appropriate deductions from the salary or wages of the employee for the period during which the employee is hereunder entitled to be absent from employment. Presentation of a voter's receipt by an employee to the employer shall constitute proof of voting by the employee.

(b) Any person, business, or corporation who refuses an employee the privileges conferred by this section, or subjects an employee to a penalty or deduction of wages because of the exercise of the privileges, or who directly or indirectly violates this section, shall be subject to a fine of not less than \$50 nor more than \$300.

(c) Any action taken to impose or collect the fines established in this section shall be a civil action. [L 1970, c 26, pt of §2; am L 1976, c 106, §1(7); am L 1981, c 100, §1(1); am L 1998, c 236, §1]

§11-96 Records prima facie evidence. Every record made pursuant to law by a board of registration of voters, or the precinct officials, shall be a prima facie evidence of the

facts therein set forth, and shall be received as such in any court or tribunal in which the same is offered in evidence. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(cc)]

§11-97 Records open to inspection. (a) A voter's full name, district/precinct designation, and voter status shall be public; but all other personal information, as provided on the voter registration affidavit, shall be confidential except for election or government purposes in accordance with rules adopted by the chief election officer, pursuant to chapter 91.

(b) Voted materials shall not be open to the inspection of any voter until after the end of the contest period unless opened upon order of the court. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(dd); am L 1983, c 34, §12; am L 1990, c 156, §8; am L 1997, c 157, §2]

Cross References

Public records, see chapter 92F.

§11-98 Forms and materials used in elections. Books, blanks, records, certificates, and other forms and materials required by this title shall be of uniform character suitable for the voting system in use and shall be prescribed by the chief election officer after consultation with the clerks involved. [L 1970, c 26, pt of §2]

§11-99 Members of Congress, applicability of election laws. The nomination and election of a senator or representative to Congress shall be in conformity to the laws applicable to the election of members of the state legislature except as expressly otherwise provided or where in conflict with federal law. [L 1970, c 26, pt of §2]

PART VIII. BALLOTS

§11-111 Official and facsimile ballots. Ballots issued by the chief election officer in state elections and by the clerk in county elections are official ballots. In elections using the paper ballot and electronic voting systems, the chief election officer or clerk in the case of county elections shall have printed informational posters containing facsimile ballots which depict the official ballots to be used in the election. The precinct officials shall post the informational posters containing the facsimiles of the official ballots near the entrance to the polling place where they may be easily seen by the voters prior to

voting. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(ee); am L 1975, c 36, §1(4); am L 1980, c 264, §1(f)]

Cross References

Ballot boxes, see §11-134.

Spoiled ballots, see §11-140.

Case Notes

Constitutional amendment ballot form found defective. 60 H. 324, 590 P.2d 543.

§11-112 Contents of ballot. (a) The ballot shall contain the names of the candidates, their party affiliation or nonpartisanship in partisan election contests, the offices for which they are running, and the district in which the election is being held. In multimember races the ballot shall state that the voter shall not vote for more than the number of seats available or the number of candidates listed where such number is less than the seats available.

(b) The ballot may include questions concerning proposed state constitutional amendments, proposed county charter amendments, or proposed initiative or referendum issues.

(c) At the chief election officer's discretion, the ballot may have a background design imprinted onto it.

(d) When the electronic voting system is used, the ballot may have pre-punched codes and printed information which identify the voting districts, precincts, and ballot sets to facilitate the electronic data processing of these ballots.

(e) The name of the candidate may be printed with the Hawaiian or English equivalent or nickname, if the candidate so requests in writing at the time the candidate's nomination papers are filed. Candidates' names, including the Hawaiian or English equivalent or nickname, shall be set on one line.

(f) The ballot shall bear no word, motto, device, sign, or symbol other than allowed in this title. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(5); am L 1977, c 189, §1(7); am L 1980, c 264, §1(g); am L 1983, c 34, §13; am L 1984, c 62, §1; am L 1996, c 173, §4]

Case Notes

Circuit courts may prevent use of ballots not in conformity with law and may compel officials to prepare proper ballots. 50 H. 379, 441 P.2d 138.

§11-113 Presidential ballots. (a) In presidential elections, the names of the candidates for president and vice president shall be used on the ballot in lieu of the names of the presidential electors, and the votes cast for president and vice president of each political party shall be counted for the presidential electors and alternates nominated by each political party.

(b) A "national party" as used in this section shall mean a party established and admitted to the ballot in at least one state other than Hawaii or one which is determined by the chief election officer to be making a bona fide effort to become a national party. If there is no national party or the national and state parties or factions in either the national or state party do not agree on the presidential and vice presidential candidates, the chief election officer may determine which candidates' names shall be placed on the ballot or may leave the candidates' names off the ballot completely.

(c) All candidates for President and Vice President of the United States shall be qualified for inclusion on the general election ballot under either of the following procedures:

(1) In the case of candidates of political parties which have been qualified to place candidates on the primary and general election ballots, the appropriate official of those parties shall file a sworn application with the chief election officer not later than 4:30 p.m. on the sixtieth day prior to the general election, which shall include:

(A) The name and address of each of the two candidates;

(B) A statement that each candidate is legally qualified to serve under the provisions of the United States Constitution;

(C) A statement that the candidates are the duly chosen candidates of both the state and the national party, giving the time, place, and manner of the selection.

(2) In the case of candidates of parties or groups not qualified to place candidates on the primary or general election ballots, the person desiring to place the names on the

general election ballot shall file with the chief election officer not later than 4:30 p.m. on the sixtieth day prior to the general election:

(A) A sworn application which shall include the information required under paragraph (1)(A) and (B), and (C) where applicable;

(B) A petition which shall be upon the form prescribed and provided by the chief election officer containing the signatures of currently registered voters which constitute not less than one per cent of the votes cast in the State at the last presidential election. The petition shall contain the names of the candidates, a statement that the persons signing intend to support those candidates, the address of each signatory, the date of the signer's signature and other information as determined by the chief election officer.

Prior to being issued the petition form, the person desiring to place the names on the general election ballot shall submit a notarized statement from each candidate of that person's intent to be a candidate for President or Vice President of the United States on the general election ballot in the State of Hawaii. Such statements may be withdrawn by a prospective candidate for Vice President and an alternative candidate for Vice President be substituted anytime prior to the notification of qualification or disqualification provided in subsection (d). Any such substitutions shall be accompanied by a notice of substitution satisfying subparagraph (A), a statement of intent as required by this paragraph, and a letter by the candidate for President endorsing the substitute candidate for Vice President. Upon receipt of a notice of substitution and all other required documents, the substitute shall replace the original candidate for Vice President on the general election ballot. The petitions issued in the names of the original candidates will remain valid for the purposes of this section.

(d) Each applicant and the candidates named, shall be notified in writing of the applicant's or candidate's eligibility or disqualification for placement on the ballot not later than 4:30 p.m. on the tenth business day after filing. The chief election officer may extend the notification period up to an additional five business days, if the applicants and candidates are provided with notice of the extension and the reasons therefore.

(e) If the applicant, or any other party, individual, or group with a candidate on the presidential ballot, objects to the finding of eligibility or disqualification the person may, not later than 4:30 p.m. on the fifth day after the finding, file a request in writing with the chief election officer for a hearing on the question. A hearing shall be called not later than 4:30 p.m. on the tenth day after the receipt of the request and shall be conducted in accord with chapter 91. A decision shall be issued not later than 4:30 p.m. on the fifth day after the conclusion of the hearing. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(ff); am L 1977, c 189, §1(8); am L 1983, c 34, §14; am L 1993, c 304, §6]

§11-114 Order of offices on ballot. The order of offices on a ballot shall be arranged substantially as follows: first, president and vice president of the United States; next, United States senators; next, United States house of representatives; next, governor and

lieutenant governor; next, state senators; next, state representatives; and next, county offices. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(gg); am L 1980, c 264, §1(h)]

§11-115 Arrangement of names on the ballot. (a) The names of the candidates shall be placed upon the ballot for their respective offices in alphabetical order except:

(1) As provided in section 11-118;

(2) For the limitations of the voting system in use; and

(3) For the case of the candidates for vice president and lieutenant governor in the general election whose names shall be placed immediately below the name of the candidate for president or governor of the same political party.

(b) In elections using the paper ballot or electronic voting systems where the names of the candidates are printed and the voter records the voter's vote on the face of the ballot, the following format shall be used: A horizontal line shall be ruled between each candidate's name and the next name, except between the names of presidential and vice presidential candidates and candidates for governor and lieutenant governor of the same political party in the general election. In such case the horizontal line shall follow the name of the candidates for vice president and lieutenant governor of the same political party, thereby grouping the candidates for president and vice president and governor and lieutenant governor of the same political party within the same pair of horizontal lines.

(c) Immediately to the left of (before) or to the right of (after) the candidate name or names, according to the requirements of the voting system, two vertical lines shall be ruled, so that in conjunction with the horizontal lines, a box shall be formed to the left of or to the right of the name and its equivalent, if any.

(d) In case of the candidates for president and vice president and governor and lieutenant governor of the same political party, only one box shall be formed opposite their set of names. The boxes shall be of sufficient size to give ample room in which to designate the choice of the voter in the manner prescribed for the voting system in use. All of the names upon a ballot shall be placed at a uniform distance from the left edge and close thereto, and shall be of uniform size and print subject to section 11-119. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(hh); am L 1976, c 106, §1(8); am L 1977, c 189, §1(9); gen ch 1985; am L 2000, c 130, §1]

Circuit courts may prevent use of ballots not in conformity with law and may compel officials to prepare proper ballots. 50 H. 379, 441 P.2d 138.

§11-116 Checking ballot form by candidates and parties. Facsimiles of all ballot layouts prior to printing shall be available for viewing by the candidates and the parties at the office of the chief election officer and the county clerk as soon after the close of filing as they are available. Such layout facsimiles shall show the type faces used, the spelling and placement of names, and other information on the ballot. [L 1970, c 26, pt of §2]

Case Notes

Purpose and requirement of section. 61 H. 179, 599 P.2d 286.

§11-117 Withdrawal of candidates; disqualification; death; notice. (a) Any candidate may withdraw not later than 4:30 p.m. on the day immediately following the close of filing for any reason and may withdraw after the close of filing up to 4:30 p.m. on the twentieth day prior to an election for reasons of ill health. When a candidate withdraws for ill health, the candidate shall give notice in writing to the chief election officer if the candidate was seeking a congressional or state office, or the candidate shall give notice in writing to the county clerk if the candidate was seeking a county office. The notice shall be accompanied by a statement from a licensed physician indicating that such ill health may endanger the candidate's life.

(b) On receipt of the notice of death, withdrawal, or upon determination of disqualification, the chief election officer or the clerk shall inform the chairperson of the political party of which the person deceased, withdrawing, or disqualified was a candidate. When a candidate dies, withdraws, or is disqualified after the close of filing and the ballots have been printed, the chief election officer or the clerk may order the candidate's name stricken from the ballot or order that a notice of the death, withdrawal, or disqualification be prominently posted at the appropriate polling places on election day.

(c) In no case shall the filing fee be refunded after filing. [L 1970, c 26, pt of §2; am L 1972, c 77, §5; am L 1973, c 217, §1(ii); am L 1983, c 34, §15; am L 1990, c 7, §2]

Cross References

Convicted persons, see chapter 831.

Attorney General Opinions

After 24 hours after the close of filing, a candidate is not entitled to withdraw and to have name dropped from the ballot. Att. Gen. Op. 70-23.

§11-118 Vacancies; new candidates; insertion of names on ballots. (a) In case of death, withdrawal, or disqualification of any party candidate after filing, the vacancy so caused may be filled by the party. The party shall be notified by the chief election officer or the clerk in the case of a county office immediately after the death, withdrawal, or disqualification.

(b) If the party fills the vacancy, and so notifies the chief election officer or clerk not later than 4:30 p.m. on the third day after the vacancy occurs, but not later than 4:30 p.m. on the fiftieth day prior to a primary or special primary election or not later than 4:30 p.m. on the fortieth day prior to a special, general, or special general election, the name of the replacement shall be printed in an available and appropriate place on the ballot, not necessarily in alphabetical order; provided that the replacement candidate fills out an application for nomination papers and signs the proper certifications on the nomination paper and takes either an oath or affirmation as provided by law. If the party fails to fill the vacancy pursuant to this subsection, no candidate's name shall be printed on the ballot for the party for that race.

(c) If the ballots have been printed and it is not reasonably possible to insert an alternate's name, the chief election officer shall issue a proclamation informing the public that the votes cast for the vacating candidate shall be counted and the results interpreted as follows:

(1) In a primary or special primary election:

(A) In partisan races, if, but for candidate's vacancy, the vacating candidate would have been nominated pursuant to section 12-41(a), a vacancy shall exist in the party's nomination, to be filled in accordance with subsection (b).

(B) In nonpartisan races, if, but for the candidate's vacancy, the vacating candidate would have qualified as a candidate for the general or special general election ballot pursuant to section 12-41(b), the nonpartisan candidate who received the next highest number of votes shall be placed on the ballot provided that the candidate also meets the requirements of section 12-41(b).

(2) In a special, general, or special general election, if, but for the candidate's vacancy, the vacating candidate would have been elected, a vacancy shall exist in the office for which the race in question was being held, to be filled in the manner provided by law for vacancies in office arising from the failure of an elected official to serve the official's full term because of death, withdrawal, or removal.

(3) In any other case where, but for the candidate's vacancy, the vacating candidate would have been deemed elected, a vacancy shall exist in the office for which the candidate has filed, to be filled in the manner provided by law for vacancies in office arising from the failure of an elected official to serve the official's full term in office because of death, withdrawal, or removal.

(d) The parties shall adopt rules to comply with this provision, and those rules shall be submitted to the chief election officer.

(e) The chief election officer or county clerk in county elections may waive any or all of the foregoing requirements in special circumstances as provided in the rules adopted by the chief election officer. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(jj); am L 1980, c 247, §1; am L 1983, c 34, §16; am L 1986, c 305, §1; am L 1990, c 7, §3; am L 2000, c 124, §1]

[§11-118.5] Constitutional amendments, proposed. Any constitutional amendment proposed by the legislature shall include in final form the exact constitutional ratification question to be printed on a ballot. The constitutional ratification question shall be phrased in a manner to enable voters to express their choice on the constitutional amendment by providing a "yes" or "no" response. The language and meaning of a constitutional amendment shall be clear and it shall be neither misleading nor deceptive. [L 1996, c 173, §1; am L 1997, c 2, §17]

§11-119 Printing; quantity. (a) The ballots shall be printed by order of the chief election officer or the clerk in the case of county elections. In any state or county election the chief election officer on agreement with the clerk may consolidate the printing contracts for similar types of ballots where such consolidation will result in lower costs.

(b) Whenever the chief election officer is responsible for the printing of ballots, the exact wording to appear thereon, including, but not limited to, questions and issues shall be submitted to the chief election officer not later than 4:30 p.m. on the sixtieth calendar day prior to the applicable election.

(c) Based upon clarity and available space, the chief election officer or the clerk in the case of county elections shall determine the style and size of type to be used in printing the ballots. The color, size, weight, shape, and thickness of the ballot shall be determined by the chief election officer.

(d) Each precinct shall receive a sufficient number of ballots based on the number of registered voters and the expected spoilage in the election concerned. A sufficient number of absentee ballots shall be delivered to each clerk not later than 4:30 p.m. on the fifteenth day prior to the date of any election. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(kk); am L 1975, c 36, §1(6); am L 1976, c 106, §1(9); am L 1979, c 133, §4; am L 1980, c 264, §1(i); am L 1985, c 203, §4]

§11-120 Distribution of ballots; record. The chief election officer or the county clerk in county elections shall forward the official ballots, specimen ballots, and other materials to the precinct officials of the various precincts. They shall be delivered and kept in a secure fashion in accordance with rules and regulations promulgated by the chief election officer. In no case shall they arrive later than the opening of the polls on election day.

A record of the number of ballots sent to each precinct shall be kept by the chief election officer or the clerk. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(ll)]

PART IX. VOTING PROCEDURES

§11-131 Hours of voting. The polls shall be opened by the precinct officials at 7:00 a.m. of the election day and shall be kept open continuously until 6:00 p.m. of that day. If, at the closing hour of voting, any voter desiring to vote is standing in line outside the entrance of the polls with the desire of entering and voting, but due to the polling place being overcrowded has been unable to do so, the voter shall be allowed to vote irrespective of the closing hour of voting. No voter shall be permitted to enter or join the line after the prescribed hour for closing the polls. If all of the registered voters of the precinct have cast their votes prior to the closing time, the polls may be closed earlier but the votes shall not be counted until after closing time unless allowed by the chief election officer. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(mm); gen ch 1985]

Cross References

Voting systems, see chapter 16.

§11-132 Two hundred foot radius; admission within polling place. (a) The precinct officials shall post in a conspicuous place, prior to the opening of the polls, a map designating an area of two hundred feet from the perimeter of the polling place and its

appurtenances. Any person who remains or loiters within an area of two hundred feet from the perimeter of the polling place and its appurtenances for the purpose of campaigning shall be guilty of a misdemeanor. For the purposes of this section, a polling place and its appurtenances shall include:

- (1) The building in which the polling place is located;
 - (2) Any parking lot adjacent to the building and routinely used for parking at that building;
 - (3) The routes of access between the building and any parking lot; and
 - (4) Any route of access between any public thoroughfare (right of way) and the polling place to ensure an open and accessible ingress and egress to and from the polling place for voters.
- (b) The chief election officer may regulate other activities within the area specified in subsection (a) pursuant to rules adopted by the chief election officer under chapter 91 in order to ensure the safe and orderly conduct of elections.
- (c) Admission within the polling place shall be limited to the following:
- (1) Election officials;
 - (2) Watchers, if any, pursuant to section 11-77;
 - (3) Candidates;
 - (4) Any voters actually engaged in voting, going to vote or returning from voting;
 - (5) Any person, designated by a voter who is physically disabled, while the person is assisting the voter;
 - (6) Any person or nonvoter group authorized by the chief election officer or the clerk in county elections to observe the election at designated precincts for educational purposes provided that they conduct themselves so that they do not interfere with the election process; and
 - (7) A child for the purpose of observing the voting process when accompanied by an adult who is voting provided that this activity does not disrupt or interfere with normal voting procedures.
- (d) Within the appropriate boundary as established in subsection (a), and the building in which the polling place is located, the display or distribution of campaign posters, signs, or other campaign materials for the purpose of soliciting votes for or against any person or political party or position on a question is prohibited. Any voter who displays

campaign material in the polling place shall remove or cover that material before entering the polling place. The chief election officer may adopt rules pursuant to chapter 91 to address special circumstances regarding the display of campaign materials. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(nn); am L 1975, c 36, §1(7); am L 1980, c 264, §1(j); gen ch 1985; am L 1993, c 97, §2; am L 1994, c 95, §1]

Attorney General Opinions

Precludes "exit polling" within a polling place and within a thousand-foot radius thereof. Att. Gen. Op. 84-4.

§11-133 Voting booths; placement of visual aids. The precinct officials shall provide sufficient voting booths within the polling place at or in which the voters may conveniently cast their ballots. The booths shall be so arranged that in casting the ballots the voters are screened from the observation of others.

Visual aids shall be posted at or in each voting booth and in conspicuous places outside the polling place before the opening of the polls. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(oo); am L 1975, c 36, §1(7A); am L 1981, c 100, §1(2)]

§11-134 Ballot transport containers; ballot boxes. (a) The seals of the ballot transport containers shall be broken and opened on election day only in the presence of at least two precinct officials not of the same political party.

(b) The chief election officer shall provide suitable ballot boxes for each polling place needed. They shall have a hinged lid fastened securely by a nonreusable seal. In the center of the lid there shall be an aperture of the appropriate size for the voting system used. The ballot boxes shall be placed at a point convenient for the deposit of ballots and where they can be observed by the precinct officials.

(c) At the opening of the polls for election, the chairperson of the precinct officials shall publicly open the ballot boxes and expose them to all persons present to show that they are empty. The ballot boxes shall be closed and sealed; they shall remain sealed until transported to the counting center; provided that, in precincts where the electronic voting system is used, the ballot boxes shall not be opened at the polling places except as provided by rules adopted pursuant to chapter 91. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(8); am L 1980, c 264, §1(k); am L 1983, c 34, §17]

§11-135 Early collection of ballots. In an electronic ballot system election the chief election officer may authorize collection of voted ballots before the closing of the polls in order to facilitate the counting of ballots; provided that the voted ballots shall be returned

to the counting center in sealed ballot boxes. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(pp); am L 1975, c 36, §1(9); am L 1980, c 264, §1(l); am L 1983, c 34, §18]

§11-136 Poll book, identification, voting. Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person.

After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(qq); gen ch 1985, 1993; am L 2003, c 23, §1]

§11-137 Secrecy; removal or exhibition of ballot. No person shall look at or ask to see the contents of the ballot or the choice of party or nonpartisan ballot of any voter, except as provided in section 11-139 and 11-132, nor shall any person within the polling place attempt to influence a voter in regard to whom the voter shall vote for. When a voter is in the voting booth for the purpose of voting, no other person, except as provided in section 11-139 and 11-132, shall be allowed to enter the booth or to be in a position from which the person can observe how the voter votes.

No person shall take a ballot out of the polling place except as provided in sections 11-135 and 11-139. After voting the voter shall leave the voting booth and deliver the voter's ballot to the precinct official in charge of the ballot boxes. The precinct official shall make certain that the precinct official has received the correct ballot and no other and then shall deposit the ballot into the ballot box. No person shall look at or ask to see the contents of the unvoted ballots. If any person having received a ballot leaves the polling place without first delivering the ballot to the precinct official as provided above, or wilfully exhibits the person's ballot or the person's unvoted ballots in a special primary or primary election, except as provided in section 11-139 and 11-132, after the ballot has been marked, the person shall forfeit the person's right to vote, and the chairperson of the precinct officials shall cause a record to be made of the proceeding. [L 1970, c 26, pt of §2; am L 1972, c 158, §1; am L 1973, c 217, §1(rr); am L 1975, c 36, §1(10); am L 1980, c 264, §1(m); gen ch 1985; am L 1993, c 97, §3]

Attorney General Opinions

Precludes "exit polling" within a polling place and within a thousand-foot radius thereof. Att. Gen. Op. 84-4.

§11-138 Time allowed voters. A voter shall be allowed to remain in the voting booth for five minutes, and having voted the voter shall at once emerge and leave the voting booth. If the voter refuses to leave when so requested by a majority of precinct officials after the lapse of five minutes, the voter shall be removed by the precinct officials. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(ss); am L 1980, c 264, §1(n); gen ch 1985]

§11-139 Voting assistance. (a) Any voter who requires assistance to vote may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or agent of the voter's union, or the voter may receive the assistance of two precinct officials who are not of the same political party. A voter needing assistance may be handed a ballot outside the polling place but within one hundred feet thereof or within the polling place parking lot by the precinct officials and in their presence but in a secret manner, mark and return the same to the precinct officials.

(b) The precinct officials shall enter in writing in the record book the following:

(1) The voter's name;

(2) The fact that the voter cannot read the names on the ballot, if that is the reason for requiring assistance, and otherwise, the specific physical disability which requires the voter to receive assistance; and

(3) The name or names of the person or persons furnishing the assistance. [L 1970, c 26, pt of §2; am L 1972, c 158, §2; am L 1973, c 217, §1(tt); am L 1985, c 203, §5; am L 2002, c 89, §1]

§11-140 Spoiled ballots. In elections using the paper ballot and electronic voting systems, if a voter spoils a ballot, the voter may obtain another upon returning the spoiled one. Before returning the spoiled ballot, the voter shall conform to the procedure promulgated by the chief election officer to retain the secrecy of the vote. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(uu); am L 1975, c 36, §1(11); am L 1980, c 264, §1(o); am L 1981, c 100, §1(3)]

PART X. VOTE DISPOSITION

§11-151 Vote count. Each contest or question on a ballot shall be counted independently as follows:

(1) If the votes cast in a contest or question are equal to or less than the number to be elected or chosen for that contest or question, the votes for that contest or question shall be counted;

(2) If the votes cast in a contest or question exceed the number to be elected or chosen for that contest or question, the votes for that contest or question shall not be counted; and

(3) If a contest or question requires a majority of the votes for passage, any blank, spoiled, or invalid ballot shall not be tallied for passage or as votes cast except that such ballots shall be counted as votes cast in ratification of a constitutional amendment or a question for a constitutional convention. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(12); am L 1986, c 305, §2; am L 2000, c 54, §1]

§11-152 Method of counting. (a) In an election using the paper ballot voting system, immediately after the close of the polls, the chairperson of the precinct officials shall open the ballot box. The precinct officials at the precinct shall proceed to count the votes as follows:

(1) The whole number of ballots shall first be counted to see if their number corresponds with the number of ballots cast as recorded by the precinct officials;

(2) If the number of ballots corresponds with the number of persons recorded by the precinct officials as having voted, the precinct officials shall then proceed to count the vote cast for each candidate;

(3) If there are more ballots or less ballots than the record calls for the precinct officials shall proceed as directed in section 11-153.

(b) In those precincts using the electronic voting system, the ballots shall be taken in the sealed ballot boxes to the counting center according to the procedure and schedule promulgated by the chief election officer to promote the security of the ballots. In the presence of official observers, counting center employees may start to count the ballots prior to the closing of the polls provided there shall be no printout by the computer or other disclosure of the number of votes cast for a candidate or on a question prior to the closing of the polls. For the purposes of this section, the closing of the polls is that time identified in section 11-131 as the closing hour of voting. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(vv); am L 1975, c 36, §1(13); am L 1977, c 189, §1(10); am L 1980, c 264, §1(p); am L 1993, c 304, §7; gen ch 1993]

§11-153 More or less ballots than recorded. (a) If there are more ballots than the poll book indicates, this shall be an overage and if less ballots, it shall be an underage. The election officials or counting center employees responsible for the tabulation of ballots shall make a note of this fact on a form to be provided by the chief election officer. The

form recording the overage or underage shall be sent directly to the chief election officer or the clerk in county elections separate and apart from the other election records.

(b) If the electronic voting system is being used in an election, the overage or underage shall be recorded after the tabulation of the ballots. In an election using the paper ballot voting system, the precinct officials shall proceed to count the votes cast for each candidate or on a question after recording the overage or underage.

(c) The chief election officer or the clerk shall make a list of all precincts in which an overage or underage occurred and the amount of the overage or underage. This list shall be filed and kept as a public record in the office of the chief election officer or the clerk in county elections and the clerk's office in counties other than the city and county of Honolulu in elections involving state candidates.

An election contest may be brought under part XI, if the overage or underage in any district could affect the outcome of an election. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(14); am L 1997, c 61, §1]

§11-154 Records, etc.; disposition. The final duty of the precinct officials in the operation of the precinct shall be to gather all records and supplies delivered to them and return them to the sending official, either the chief election officer or the county clerk.

The voted ballots shall be kept secure and handled only in the presence of representatives not of the same political party in accordance with regulations promulgated for the various voting systems. After all the ballots have been tabulated they shall be sealed in containers. Thereafter these containers shall be unsealed and resealed only as prescribed by rules and regulations governing the elections.

The ballots and other election records may be destroyed by the chief election officer or county clerk when all elected candidates have been certified by the chief election officer, or in the case of candidates for county offices, by the county clerk. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(wv)]

Cross References

Records open to inspection, see §11-97.

§11-155 Certification of results of election. On receipt of certified tabulations from the election officials concerned, the chief election officer or county clerk in county elections shall compile, certify, and release the election results after the expiration of the time for bringing an election contest. The certification shall be based on a comparison and reconciliation of the following:

- (1) The results of the canvass of ballots conducted pursuant to chapter 16;
- (2) The audit of pollbooks (and related record books) and resultant overage and underage report;
- (3) The audit results of the manual audit team;
- (4) The results of the absentee ballot reconciliation report compiled by the clerks; and
- (5) All logs, tally sheets, and other documents generated during the election and in the canvass of the election results.

A certificate of election or a certificate of results declaring the results of the election as of election day shall be issued pursuant to section 11-156; provided that in the event of an overage or underage, a list of all precincts in which an overage or underage occurred shall be attached to the certificate. The number of candidates to be elected receiving the highest number of votes in any election district shall be declared to be elected. Unless otherwise provided, the term of office shall begin or end as of the close of polls on election day. The position on the question receiving the appropriate majority of the votes cast shall be reflected in a certificate of results issued pursuant to section 11-156. [L 1970, c 26, pt of §2; am L 1980, c 264, §1(b); am L 1986, c 305, §3; am L 1997, c 61, §2]

Attorney General Opinions

When board of education members can assume official duties. Att. Gen. Op. 86-21.

§11-156 Certificate of election and certificate of results, form. The chief election officer or county clerk shall deliver certificates of election to the persons elected as determined under section 11-155. The chief election officer or county clerk in county elections shall issue certificates of results where a question has been voted upon. Certificates of election shall be delivered only after the filing of expense statements by the person elected in accordance with part XII and after the expiration of time for bringing an election contest. The certificate of election shall be substantially in the following form:

CERTIFICATE OF ELECTION

I,....., chief election officer (county clerk) of Hawaii (county), do hereby certify that was on theday of 19....., duly elected a (name of office) for the district for a term expiring on the day of, A.D. 19.....

Witness my hand this day of, A.D. 19.....

.....

Chief Election Officer (County Clerk)

The certificate of results shall be substantially in the following form:

CERTIFICATE OF RESULTS

I,, chief election officer (county clerk) of Hawaii (county), do hereby certify that (question) was on the day of 19....., duly adopted (rejected) by a majority of the votes cast.

.....

Chief Election Officer (County Clerk)

If there is an election contest these certificates shall be delivered only after a final determination in the contest has been made and the time for an appeal has expired. [L 1970, c 26, pt of §2; am L 1986, c 305, §4]

§11-157 In case of tie. In case of the failure of an election by reason of the equality of vote between two or more candidates, the tie shall be decided by the chief election officer or county clerk in the case of county elections in accordance with the following procedure:

(1) In the case of an election involving a seat for the senate, house of representatives, board of education, or county council where only voters within a specified district are allowed to cast a vote, the winner shall be declared as follows:

(A) For each precinct in the affected district, an election rate point shall be calculated by dividing the total voter turnout in that precinct by the total voter turnout in the district. For the purpose of this subparagraph, the absentee votes cast for the affected district shall be treated as a precinct. The election rate point shall be calculated by dividing the total absentee votes cast for the affected district by the total voter turnout in that district. All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth.

(B) The candidate with the highest number of votes in a precinct shall be allocated the election rate point calculated under subparagraph (A) for that precinct. In the event that two or more persons are tied in receiving the highest number of votes for that precinct, the election rate point shall be equally apportioned among those candidates involved in that precinct tie.

(C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as provided under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the highest election rate point total shall be declared the winner.

(D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the precinct with the largest voter turnout shall be declared the winner.

(2) In the case of an election involving a federal office or an elective office where the voters in the entire State or in an entire county are allowed to cast a vote, the winner shall be declared as follows:

(A) For each representative district in the State or county, as the case may be, an election rate point shall be calculated by dividing the total voter turnout in that representative district by the total voter turnout in the state, county, or federal office district, as the case may be; provided that for purposes of this subparagraph:

(i) The absentee votes cast for a statewide, countywide, or federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total absentee votes cast for the statewide, countywide, or federal office by the total voter turnout in the state, county, or federal office district, as the case may be.

(ii) The overseas votes cast for any election in the State for a federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total number of overseas votes cast for the affected federal office by the total voter turnout in the affected federal office district. The term "overseas votes" means those votes cast by absentee ballots for a presidential election as provided in section 15-3.

All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth.

(B) The candidate with the highest number of votes in a representative district shall be allocated the election rate point calculated under subparagraph (A) for that district. In the event that two or more persons are tied in receiving the highest number of votes for that district, the election rate point shall be equally apportioned among those candidates involved in that district tie.

(C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as prescribed under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the election rate point total shall be declared the winner.

(D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the representative district with the largest voter turnout shall be declared the winner. [L 1970, c 26, pt of §2; gen ch 1985; am L 1990, c 198, §2; am L 1996, c 239, §2]

PART XI. ELECTION CONTESTS

Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCP rule 81(b)(10); appeal to supreme court, see Hawaii Rules of Appellate Procedure.

§11-171 Applicability of this part. This part shall apply whenever a contested election is subject to determination by a court of competent jurisdiction in the manner provided by law. [L 1970, c 26, pt of §2]

Case Notes

The court has jurisdiction to decide election contest involving legislative seat. 51 H. 354, 461 P.2d 221.

Supreme court has jurisdiction to determine validity of the manner of submission and ratification of state constitution amendments. 60 H. 324, 590 P.2d 543.

§11-172 Contests for cause; generally. With respect to any election, any candidate, or qualified political party directly interested, or any thirty voters of any election district, may file a complaint in the supreme court. The complaint shall set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause a difference in the election results. The complaint shall also set forth any reasons for reversing, correcting, or changing the decisions of the precinct officials or the officials at a counting center in an election using the electronic voting system. A copy of the complaint shall be delivered to the chief election officer or the clerk in the case of county elections. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(xx); am L 1975, c 36, §1(15); am L 1991, c 9, §2]

Case Notes

A candidate's campaign coordinator has no standing to contest election. 56 H. 47, 527 P.2d 236.

Sufficiency of complaint. 56 H. 47, 527 P.2d 236.

Electorate as whole had standing. 61 H. 179, 599 P.2d 286.

Plaintiffs failed to meet burden of demonstrating that irregularities in voting procedures for OHA trustees either could have caused a difference in election outcome or could have precluded the correct result from being ascertained. 84 H. 383, 935 P.2d 98.

§11-173 REPEALED. L 1973, c 217, §1(yy).

§11-173.5 Contests for cause in primary, special primary elections, and county elections held concurrently with a regularly scheduled primary or special primary election. (a) In primary and special primary election contests, and county election contests held concurrently with a regularly scheduled primary or special primary election, the complaint shall be filed in the office of the clerk of the supreme court not later than 4:30 p.m. on the sixth day after a primary or special primary election, or county election contests held concurrently with a regularly scheduled primary or special primary election, and shall be accompanied by a deposit for costs of court as established by rules of the supreme court. The clerk shall issue to the defendants named in the complaint a summons to appear before the supreme court not later than 4:30 p.m. on the fifth day after service thereof.

(b) In primary and special primary election contests, and county election contests held concurrently with a regularly scheduled primary or special primary election, the court shall hear the contest in a summary manner and at the hearing the court shall cause the evidence to be reduced to writing and shall not later than 4:30 p.m. on the fourth day after the return give judgment fully stating all findings of fact and of law. The judgment shall decide what candidate was nominated or elected, as the case may be, in the manner presented by the petition, and a certified copy of the judgment shall forthwith be served on the chief election officer or the county clerk, as the case may be, who shall place the name of the candidate declared to be nominated on the ballot for the forthcoming general, special general, or runoff election. The judgment shall be conclusive of the right of the candidate so declared to be nominated; provided that this subsection shall not operate to amend or repeal section 12-41. [L 1973, c 217, §1(aaa); am L 1974, c 34, §1(c); am L 1979, c 133, §5; am L 1998, c 22, §2]

Rules of Court

Collection of costs and fees by appellate clerk, see HRAP rule 45(e).

§11-174 REPEALED. L 1973, c 217, §1(zz).

§11-174.5 Contests for cause in general, special general, special, and runoff elections. (a) In general, special general, special, or runoff elections, the complaint shall be filed in the office of the clerk of the supreme court not later than 4:30 p.m. on the twentieth day following the general, special general, special, or runoff election and shall be accompanied by a deposit for costs of court as established by rules of the supreme court. The clerk shall issue to the defendants named in the complaint a summons to appear before the supreme court not later than 4:30 p.m. on the tenth day after service thereof.

(b) In cases involving general, special general, special, or runoff elections the complaint shall be heard by the supreme court in which the complaint was filed as soon as it reasonably may be heard. On the return day, the court, upon its motion or otherwise, may direct summons to be issued to any person who may be interested in the result of the proceedings.

At the hearing, the court shall cause the evidence to be reduced to writing and shall give judgment, stating all findings of fact and of law. The judgment may invalidate the general, special general, special, or runoff election on the grounds that a correct result cannot be ascertained because of a mistake or fraud on the part of the precinct officials; or decide that a certain candidate, or certain candidates, received a majority or plurality of

votes cast and were elected. If the judgment should be that the general, special general, special, or runoff election was invalid, a certified copy thereof shall be filed with the governor, and the governor shall duly call a new election to be held not later than one hundred twenty days after the judgment is filed. If the court shall decide which candidate or candidates have been elected, a copy of that judgment shall be served on the chief election officer or county clerk, who shall sign and deliver to the candidate or candidates certificates of election, and the same shall be conclusive of the right of the candidate or candidates to the offices. [L 1973, c 217, §1(bbb); am L 1979, c 133, §6; gen ch 1985; am L 1998, c 22, §3 and c 123, §1]

Rules of Court

Costs, see HRAP rule 39; collection of costs and fees by appellate clerk, see HRAP rule 45(e).

Case Notes

Where plaintiffs had opportunity to correct irregularities in ballot prior to the election, they cannot complain afterward. 61 H. 179, 599 P.2d 286.

Plaintiffs failed to meet burden of demonstrating that irregularities in voting procedures for OHA trustees either could have caused a difference in election outcome or could have precluded the correct result from being ascertained. 84 H. 383, 935 P.2d 98.

§11-175 Powers of supreme court; costs. The supreme court may compel the attendance of witnesses, punish contempts, and do whatsoever else may be necessary fully to determine the proceedings, and enforce its decrees therein. The court may make such special rules as it may find necessary or proper. The costs shall be as provided by the supreme court by rule. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(ccc); am L 1993, c 6, §3]

§11-176 REPEALED. L 1973, c 217, §1(ddd).

PART XII. EXPENSES

A. Election Expenses

§11-181 Capital equipment. The State shall pay for all voting system capital equipment. This shall include, but not be limited to voting machines, voting devices, and initial computer programs. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(16)]

§11-182 Election expenses when no county elections. All expenses, including expenses attributable to registration of voters by the county clerk, for state elections conducted in any county which do not involve elections for county offices shall be borne by the State and paid out of such appropriations as may be made by the legislature for election purposes. [L 1970, c 26, pt of §2]

Cross References

Precinct officials' compensation, see §11-76.

§11-183 Election expenses when no state elections. All expenses for county elections which do not involve state offices shall be borne by the county and paid out of such appropriations as may be made by the council for election purposes. [L 1970, c 26, pt of §2]

§11-184 Election expenses and responsibilities in combined state and county elections. Election expenses in elections involving both state and county offices shall be shared as set forth below:

(1) The State shall pay and be responsible for:

(A) Precinct officials;

(B) Instruction of precinct officials when initiated or approved by the chief election officer;

(C) Boards of registration;

(D) Polling place costs other than supplies: installation rentals, ballot boxes, voting booths, custodians, telephones, and maintenance;

(E) Other equipment such as ballot transport containers;

(F) Temporary election employees hired to do strictly state work; and

(G) Extraordinary voter registration and voter education costs when approved by the chief election officer.

(2) The county shall pay and be responsible for:

(A) Normal voter registration, voters list maintenance, and all printing connected with voter registration, including printing of the voters list;

(B) Temporary election employees hired to do strictly county work;

(C) Maintenance of existing voting machines, including parts, freight, storage, programming, and personnel;

(D) Maintenance and storage of voting devices and other equipment; and

(E) Employees assigned to conduct absentee polling place functions.

(3) The remaining election expenses shall be divided in half between the State and the counties. Each county will pay a proration of expenses as a proportion of the registered voters at the time of the general election. These expenses shall include but not be limited to:

(A) Polling place supplies;

(B) All printing, including ballots, but excluding printing connected with voter registration;

(C) Temporary election employees not including voting machine programmers doing work for both the State and county;

(D) Ballot preparation and packing; and

(E) All other costs for which the State or county are not specifically responsible relating to the operation of voting machines, electronic voting systems, and other voting systems except paper ballots to include but not be limited to real property rentals, equipment rentals, personnel, mileage, telephones, supplies, publicity, computer programming, and freight.

The responsibility for the above functions shall be determined by the chief election officer where the responsibility for such functions has not been assigned by the legislature.

Any future expenses not presently incurred under any voting system now in use or to be used shall be assigned to paragraphs (1), (2), or (3) above by the chief election officer upon agreement with the clerks or by the legislature. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(eee); am L 1976, c 106, §1(10)]

B. Election Campaign Contributions and Expenditures

§§11-191 to 213 [OLD] REPEALED. L 1979, c 224

Attorney General Opinions

Prior law, generally. Att. Gen. Op. 76-2.

§11-191 Definitions. When used in this subpart:

"Advertisement" means:

(1) Any communication, exclusive of bumper stickers or other sundry items, that:

- (A) Identifies a candidate either directly or by direct implication;
- (B) Advocates or supports the nomination for election of the candidate;
- (C) Advocates or supports the election of the candidate; or
- (D) Advocates or supports the candidate's defeat.

(2) Any communication, exclusive of bumper stickers or other sundry items, that:

(A) Identifies an issue or question that will appear on the ballot at the next applicable election; or

(B) Advocates or supports the passage or defeat of the question or issue.

"Ballot issue committee" means a committee as defined in this section which has the exclusive purpose of making or accepting contributions or expenditures for or against any issue appearing on the ballot at the next applicable election.

"Campaign treasurer" means a person appointed under section 11-198, and, unless expressly indicated otherwise, includes deputy campaign treasurers.

"Candidate" means an individual who seeks nomination for election, or seeks election, to office. Until an individual terminates the individual's candidacy with the commission, an individual is a candidate if the individual does any of the following:

(1) Files nomination papers for an office for oneself with the county clerk's office or with the chief election officer's office, whichever is applicable;

(2) Receives contributions in an aggregate amount of more than \$100 or makes or incurs any expenditures of more than \$100 to bring about the individual's nomination for election, or to bring about the individual's election to office;

(3) Gives consent for any other person to receive contributions or make expenditures to aid the individual's nomination for election, or the individual's election, to office; or

(4) Is certified to be a candidate by the chief election officer or county clerk.

"Candidate's committee" means a committee as defined in this section which makes an expenditure or accepts a contribution in behalf of a candidate with the candidate's authorization. A candidate shall have only one authorized candidate's committee.

"Clearly identified" means the name, photograph or other similar image, or other unambiguous identification of the candidate.

"Commission" means the campaign spending commission.

"Commissioner" means any person appointed to the campaign spending commission.

"Committee" means:

(1) Any organization, association, or individual that accepts or makes a contribution or makes an expenditure for or against any:

(A) Candidate;

(B) Individual who files for nomination at a later date and becomes a candidate; or

(C) Party;

with or without the authorization of the candidate, individual, or party. In addition, the term "committee" means any organization, association, or individual who accepts or makes a contribution or makes an expenditure for or against any question or issue appearing on the ballot at the next applicable election; or

(2) Any organization, association, or individual that raises or holds money or anything of value for a political purpose, with or without the consent or knowledge of any:

(A) Candidate;

(B) Individual who files for nomination at a later date and becomes a candidate; or

(C) Party; and

subsequently contributes money or anything of value to, or makes expenditures on behalf of, the candidate, individual, or party.

Notwithstanding any of the foregoing, the term "committee" shall not include any individual making a contribution or expenditure of the individual's own funds or anything of value that the individual originally acquired for the individual's own use and not for the purpose of evading any provision of this subpart, or any organization, which raises or expends funds for the sole purpose of the production and dissemination of informational or educational advertising.

"Contribution" means:

(1) A gift, subscription, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to fundraisers for the purpose of:

(A) Influencing the nomination for election, or election, of any person to office;

(B) Influencing the outcome of any question or issue that appears or is reasonably certain to appear on the ballot at the next applicable election described in subparagraph (A); or

(C) Use by any party or committee for the purposes set out in subparagraph (A) or (B);

(2) The payment, by any person, political party, or any other entity other than a candidate or committee, of compensation for the personal services or services of another person that are rendered to the candidate or committee without charge or at an unreasonably low charge for the purposes set out in paragraph (1)(A), (1)(B), or (1)(C);

(3) A contract, promise, or agreement to make a contribution; provided that notwithstanding this paragraph and paragraphs (1) and (2), the term "contributions" shall not include services or portions thereof voluntarily provided without reasonable compensation by individuals to or in behalf of a candidate or committee; or

(4) Notwithstanding paragraphs (1), (2), and (3), a candidate's expenditure of the candidate's own funds or the making of a loan or advance in the pursuit of the candidate's campaign shall not be a contribution for the purpose of this subpart but shall nevertheless be reportable as a campaign receipt.

"Earmarked funds" means contributions received by a committee or party on the condition that the funds be contributed to or expended on certain candidates, issues, or questions.

"Election" means any election for office or for determining a question or issue provided by law or ordinance.

"Election period" means the two-year period between general election days if a candidate is seeking nomination or election to a two-year office and the four-year time period between general election days if a candidate is seeking nomination or election to a four-year office.

"Expenditure" means:

(1) Any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a nonmonetary contribution for the purpose of:

(A) Influencing the nomination for election, or election, of any person seeking nomination for election, or election, to office whether or not the person has filed the person's nomination paper;

(B) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or

(C) Use by any party or committee for the purposes set out in subparagraph (A) or (B);

(2) The payment, by any person other than a candidate or committee, of compensation for the personal services of another person that are rendered to the candidate or committee for any of the purposes mentioned in paragraph (1); or

(3) The expenditure by a candidate of the candidate's own funds for the purposes set out in paragraph (1).

(4) The term does not include volunteer personal services and voter registration efforts that are not partisan.

"House bulletin" means a communication sponsored by any person in the regular course of publication for limited distribution primarily to its employees or members.

"Immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons.

"Independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate's committee, a party, or their agents.

"Individual" means a natural person.

"Loan" means an advance of money, goods, or services, with a promise to repay in full or in part within a specified period of time.

"Matching payment period" means:

(1) For a primary election, from January 1 of the year of a general election through the day of the primary election, or nine months prior to a special election through the day of a special election; and

(2) For a general election, from January 1 of the year of a general election through the day of the general election.

"Newspaper" means a publication of general distribution in the State issued once or more per month which is written and published in the State.

"Noncandidate committee" means a committee as defined in this section that has the purpose of making contributions or expenditures to influence the nomination for election, the election of any candidate to political office, or for or against any issue on the ballot, but does not include a candidate's committee.

"Office" means any elective public or constitutional office excluding county neighborhood board and federal elective offices.

"Party" means any political party which satisfies the requirements of section 11-61.

"Person" means an individual, partnership, committee, association, corporation, or labor union and its auxiliary committees.

"Political committees established and maintained by a national political party" means:

- (1) The National Committee;
- (2) The House Campaign Committee; and
- (3) The Senate Committee.

"Private contribution" means a monetary contribution other than from a candidate's own funds or from the Hawaii election campaign fund.

"Qualifying campaign contribution" means an aggregate monetary contribution of \$100 or less, by any person during any matching payment period. Qualifying contributions do not include loans or in-kind contributions.

"Residual funds" or "surplus funds" means unspent money from contributions held by a candidate or committee after a general or special election and after all campaign expenditures have been paid for the election period.

"Separate segregated fund" means a noncandidate committee that is established by a state or national bank, a corporation, or a labor organization for the purpose of making contributions or expenditures to influence the nomination for election or the election of any candidate to political office, or for or against any issue on the ballot.

"Special election" means any election other than a primary or general election.

"Surplus funds" has the same meaning as "residual funds".

"Terminate candidacy" means the date on which a candidate has no surplus or deficit and has filed a notice of termination with the campaign spending commission on forms prescribed by the commission. [L 1979, c 224, pt of §2; am L 1980, c 232, §1 and c 246, §1(a); am L 1981, c 102, §1 and c 217, §1; gen ch 1985; am L 1987, c 369, §1(1); am L Sp 1995, c 10, §2(2) and c 27, §§7, 15; am L 1997, c 375, §2; am L 1999, c 64, §1, c 96, §§1, 12, c 141, §3, and c 187, §§1, 2; am L 2005, c 203, §2]

Attorney General Opinions

"Kauaians for Nukoli" is a "committee" for purposes of this section. Att. Gen. Op. 84-2.

§11-192 Campaign spending commission. There is established a campaign spending commission. The commission shall consist of five members of the general public,

appointed by the governor from a list of ten nominees submitted by the judicial council. The judicial council may solicit applications for the list of nominees through community organizations and advertisements in any newspaper of general circulation. Any vacancies in the commission shall be filled by the governor with a member from the list of nominees or by reappointment of a commissioner whose term has expired, subject to the limit on length of service imposed by section 26-34.

The judicial council shall meet and expeditiously select additional persons for the list of nominees whenever the number of the eligible nominees falls below five.

Notwithstanding section 26-34, these appointments shall not be subject to senatorial confirmation. The term of the commissioners shall be four years, except that the terms of the initial commissioners shall be two years for two commissioners, three years for two other commissioners and four years for the chairperson, as determined by the governor.

The commissioners shall serve without compensation but they shall be reimbursed for reasonable expenses, including travel expenses, incurred in the discharge of their duties. The commission shall be placed within the department of accounting and general services for administrative purposes. [L 1979, c 224, pt of §2; gen ch 1985, 1993; am L Sp 1995, c 10, §2(3); am L 2003, c 117, §6]

Note

Transfer of functions, duties, etc. L 2003, c 117, §§7, 8.

Attorney General Opinions

Section, as amended, required judicial council to select completely new panel of nominees for campaign spending commission in accordance with amended criteria. Att. Gen. Op. 96-3.

[§11-192.5] Commissioners; political activities. (a) A member of the commission or its staff shall not participate in any political campaign during the member's or employee's term of office or employment including making a financial contribution to a candidate or political committee.

(b) Each commissioner shall retain the right to:

(1) Register and vote as the commissioner chooses in any election;

(2) Participate in the nonpolitical activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(3) Be a member of a political party or other noncandidate political organization and participate in its activities to the extent consistent with law; and

(4) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the commissioner's efficiency or integrity as a commissioner or the neutrality, efficiency, or integrity of the commission.

(c) A commissioner may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics or this section. [L Sp 1995, c 10, pt of §2(1)]

§11-193 Duties of the commission. (a) The duties of the commission under this subpart are:

(1) To develop and adopt reporting forms required by this subpart;

(2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;

(3) To preserve all reports required by this subpart for at least ten years from the date of receipt;

(4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;

(5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to these persons. The commission shall publish in the newspaper, and on its website, the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of \$50. Failure to respond after a newspaper notification or website publication shall result in an additional

penalty of \$50 for each day a report remains overdue or uncorrected. All penalties collected under this section shall be deposited in the Hawaii election campaign fund;

- (6) To hold public hearings;
 - (7) To investigate and hold hearings for receiving evidence of any violations;
 - (8) To adopt a code of fair campaign practices as a part of its rules;
 - (9) To establish rules pursuant to chapter 91;
 - (10) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;
 - (11) To administer and monitor the distribution of public funds under this subpart;
 - (12) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
 - (13) To employ or contract, without regard to chapters 76 and 89 and section 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
 - (14) To do random audits, field investigations, as necessary;
 - (15) To file for injunctive relief when indicated; and
 - (16) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the persons in the request for an advisory opinion.
- (b) In performing the functions and duties under this subpart, the commission may subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects, to the commission office at any place in the State whether or not the subpoena is in connection with any hearing; provided that the person or documents subpoenaed shall be relevant to a matter under study or investigation by the

commission. The books, papers, documents, or objects may be retained by the commission for a reasonable period of time for the purpose of examination, audit, copying, testing, and photographing. The subpoena power shall be exercised by the chairperson of the commission, or such other person as the chairperson may designate. Upon application of the commission, obedience to the subpoena shall be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by a circuit court.

(c) The commission shall be exempt from section [26-35(a)(1), (4), and (5)] and shall:

(1) Make direct communications with the governor and legislature;

(2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the commission without the approval of the comptroller; and

(3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

The commission shall follow all applicable personnel laws. [L 1979, c 224, pt of §2; am L 1980, c 232, §1; gen ch 1985; am L Sp 1993, c 8, §53; gen ch 1993; am L Sp 1995, c 10, §2(4) superseding L Sp 1995, c 27, §§6, 15; am L 1996, c 13, §21; am L 1997, c 2, §1 and c 375, §3; am L 1999, c 96, §2; am L 2000, c 253, §150; am L 2004, c 57, §4; am L 2005, c 203, §3]

Case Notes

Where defendants argued that plaintiff waived constitutional right to free speech by voluntarily signing Code of Fair Campaign Practices (Code), plaintiff did not waive ability to assert First Amendment rights; campaign spending commission's (commission) administrative decision did not have preclusive effect on the court proceeding; Code unconstitutionally burdened protected speech; commission's censure of plaintiff violated plaintiff's First Amendment rights to free speech. 135 F. Supp. 2d 1114.

§11-194 Registration. (a) Each candidate, committee, or party shall file an organizational report as set forth in section 11-196 or 11-196.5 as applicable.

(b) Committees that form within ten days of any election and expend in the aggregate more than \$1,000 for the election shall register and fully disclose the expenditure by 4:30 p.m. on the last calendar day prior to the expenditure.

(c) Each candidate who files nomination papers for office with the chief election officer or county clerk shall file an organizational report within ten days of:

(1) Filing the nomination papers for office; or

(2) The date the candidate or candidate's committee receives contributions or makes expenditures that amount to more than \$100 in the aggregate during the applicable election period.

(d) An elected official who is seeking re-election to the same office in successive elections shall not be required to file an organizational report under this section unless the candidate is required to report a change in information pursuant to section 11-196(b); provided that the candidate has not sought election to any other office during the period between elections.

(e) A noncandidate committee shall file an organizational report within ten days of receiving contributions or making expenditures that amount to more than \$1,000, in the aggregate, in a two-year election period. [L 1979, c 224, pt of §2; am L 1980, c 246, §1(b); am L 1981, c 218, §1; am L 1987, c 369, §1(2); am L Sp 1995, c 27, §§7, 15; am L 1997, c 375, §4; am L 1999, c 96, §§3, 12 and c 141, §3; am L 2000, c 99, §1; am L 2005, c 203, §4]

§11-195 Filing of reports, generally. (a) All reports required to be filed under this subpart by a candidate or those committees directly associated with the candidate's candidacy shall be certified by the candidate and treasurer. Reports required to be filed under this subpart by a party or committee that supports more than one candidate shall be certified by a person authorized to sign the reports. All reports required to be filed under this subpart shall be open for public inspection in the office of the commission.

(b) The original and one copy of all reports required under this subpart shall be filed at the office of the commission. In the case of counties having less than two hundred thousand voters, the filing shall be accomplished by filing an original and two copies of the required report with either the commission or the clerk of the county in which the candidate resides. The clerk shall then immediately mail the original and one copy of the report to the commission.

(c) The commission or county clerk shall give each person filing a report a receipt stating the type of report filed and the date and time of filing.

(d) All reports filed with the county clerk's office shall be preserved by that office for four years from the date of receipt.

(e) All reports required to be filed under this subpart shall at all times be available to the general public.

(f) For purposes of this subpart, whenever a report is required to be filed with the commission, "filed" means received in the office of the commission or county clerk, whichever is applicable, by the date and time specified for the filing of the report; except that a candidate or the committee of a candidate who is seeking election to the:

- (1) Office of governor;
- (2) Office of lieutenant governor;
- (3) Office of mayor;
- (4) Office of prosecuting attorney;
- (5) County council;
- (6) Senate;
- (7) House of representatives; or
- (8) Office of Hawaiian affairs,

shall file by electronic means in the manner prescribed by the commission. Candidates for the offices named in this subsection with contributions or expenditures of less than \$5,000 need not file by electronic means. A candidate or candidate committee without access to a computer or the Internet may request a waiver from electronic filing from the commission. [L 1979, c 224, pt of §2; am L 1980, c 232, §1 and c 246, §1(c); gen ch 1985; am L Sp 1995, c 10, §2(5) and c 27, §§7, 15; am L 1997, c 375, §5; am L 1999, c 96, §§4, 12 and c 141, §3; am L 2005, c 203, §5]

§11-196 Organizational report, candidate's committee. (a) The organizational report shall include:

- (1) The name and address of the candidate or individual, or committee, filing the report, including web page address, if any;
- (2) The name, address, office sought, district, and party affiliation, of each candidate or individual whom the committee or party is supporting;
- (3) The names and addresses of the campaign treasurer and deputies together with the treasurer's written acceptance of appointment;
- (4) The names and addresses of the campaign chairperson and deputy campaign chairperson together with the campaign chairperson's written acceptance of appointment;

(5) A list of all banks, safety deposit boxes, or other depositories used with each applicable account number; and

(6) The amount, name, and address, of each donor who has contributed an aggregate amount of more than \$100 since the last election applicable to the office being sought and the amount and date of deposit of each such contribution.

(b) Any change in information submitted in the organizational report with the exception of subsection (a)(6) shall be reported no later than 4:30 p.m. on the tenth calendar day after such change is brought to the attention of the candidate, committee, or campaign treasurer. [L 1979, c 224, pt of §2; am L 1987, c 369, §1(3); am L Sp 1995, c 10, §2(6); am L 1996, c 13, §2; am L 2000, c 99, §2]

[§11-196.5] Organizational report, noncandidate committee. (a) The organizational report shall include:

(1) The full name of the committee, which may not include the name of a candidate;

(2) The complete mailing address and telephone number of the committee;

(3) The date the committee was organized;

(4) The area, scope, or jurisdiction of the committee;

(5) An indication as to whether the committee is a political party committee;

(6) The name and mailing address of a corporation or an organization that provides funds to the committee. If the committee is not sponsored by or connected with a corporation or an organization, the committee must specify the trade, profession, or primary interest of contributors to the committee;

(7) The full name, mailing address, telephone number, occupation, and principal place of business of the chairperson;

(8) The full name, mailing address, telephone number, occupation, and principal place of business of the treasurer and any other officers;

(9) An indication of whether the committee was formed to support or oppose a specific ballot question or questions, or candidate and if so, a brief description of the questions or the name of the candidate;

(10) The full name, mailing address, telephone number, occupation, and principal place of business of the custodian of the books and accounts if other than the designated officers;

(11) The full name and address of the depository in which the committee will maintain its campaign account;

(12) Written acceptance of appointment by the chairperson and treasurer;

(13) A certification of the statement by the chairperson and the treasurer; and

(14) The name, address, occupation, and employer of each donor who has contributed an aggregate amount of more than \$100 since the last election and the amount and date of deposit of each such contribution.

(b) The name of the committee designated on the statement of organizations must incorporate the full name of the sponsoring entity, if any. An acronym or abbreviation may be used in other communications if the acronym or abbreviation is commonly known or clearly recognized by the general public.

(c) Any change in information submitted in the organizational report with the exception of subsection (a)(14) shall be reported no later than 4:30 p.m. on the tenth calendar day after the change is brought to the attention of the committee chairperson or treasurer. The accuracy of the information in the organizational report shall be affirmed, on forms provided by the commission, annually by September 1. [L Sp 1995, c 10, pt of §2(1)]

§11-197 Designated central committee. Each candidate for a statewide or county office who is supported by more than one committee shall designate a central committee which shall be responsible for aggregating the total contributions and expenditures of all committees directly associated with the candidate and for filing composite reports indicating this information pursuant to sections 11-212 and 11-213. [L 1979, c 224, pt of §2]

§11-198 Campaign treasurer. (a) Every committee, party, and candidate shall appoint a campaign treasurer on or before the day for filing an organizational report. Up to five deputy campaign treasurers may be appointed. A candidate may appoint oneself as campaign treasurer.

(b) A campaign treasurer may be removed at any time. In case of death, resignation, or removal of the campaign treasurer, the committee, party, or candidate shall promptly appoint a successor. During the period the office of campaign treasurer is vacant, the candidate, committee chairperson, or party chairperson, whichever is applicable, shall serve as campaign treasurer.

(c) Only the campaign treasurer and deputy campaign treasurers shall be authorized to receive contributions or make expenditures on behalf of the appointing candidate, committee, or party.

(d) A candidate may appoint on a fee or voluntary basis a person other than an officer or treasurer to specifically prepare and file reports with the campaign spending commission. [L 1979, c 224, pt of §2; gen ch 1993; am L Sp 1995, c 10, §2(7)]

§11-199 Campaign contributions, generally. (a) All monetary contributions shall be promptly deposited in a depository institution, as defined by section 412:1-109, duly authorized to do business in the State, such as a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, or the National Credit Union Administration in the name of the candidate, committee, or party, whichever is applicable.

(b) Each candidate, committee, or party shall establish and maintain an itemized record showing:

- (1) The amount of each monetary contribution;
- (2) The description and value of each nonmonetary contribution; and
- (3) The name and address of each donor making a contribution of more than \$25 in value.

(c) No candidate, committee, or party shall accept a contribution of more than \$100 in cash from a single person without issuing a receipt to the donor and keeping a record of the transaction.

(d) Each committee and party shall disclose the original source of all earmarked funds, the ultimate recipient of the earmarked funds, and the fact that the funds are earmarked. [L 1979, c 224, pt of §2; am L 1987, c 369, §1(4); am L 1989, c 266, §3; am L 1997, c 375, §6; am L 1999, c 96, §5]

§11-200 Campaign contributions; restrictions against transfer. (a) A candidate, campaign treasurer, or candidate's committee shall not receive any contributions or receive or make any transfer of money or anything of value:

- (1) For any purpose other than that directly related:
 - (A) In the case of the candidate, to the candidate's own campaign; or
 - (B) In the case of a campaign treasurer or candidate's committee, to the campaign of the candidate, question, or issue with which they are directly associated; or
- (2) To support the campaigns of candidates other than the candidate for whom the funds were collected or with whom the campaign treasurer or candidate's committee is directly associated; or

(3) To campaign against any other candidate not directly opposing the candidate for whom the funds were collected or with whom the campaign treasurer or candidate's committee is directly associated.

(b) Any provision of law to the contrary notwithstanding, a candidate, campaign treasurer, or candidate's committee, as a contribution:

(1) May purchase from its campaign fund not more than two tickets for each event held by another candidate, committee, or party whether or not the event constitutes a fundraiser as defined in section 11-203;

(2) May use campaign funds for any ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office, as the term is used in section 11-206(c); and

(3) May make contributions from its campaign fund to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a); provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election.

(c) This section shall not be construed to prohibit a party from supporting more than one candidate.

(d) This section shall not be construed to prohibit a candidate for the office of governor or lieutenant governor from supporting a co-candidate in the general election.

(e) This section shall not be construed to prohibit a candidate from making contributions to the candidate's party so long as that contribution is not earmarked for another candidate. [L 1979, c 224, pt of §2; am L 1980, c 232, §2 and c 246, §1(d); gen ch 1985; am L 1987, c 369, §1(5); am L Sp 1995, c 10, §2(8); am L 2000, c 99, §3; am L 2005, c 203, §6]

§11-201 Anonymous contributions; unlawful. (a) No person shall make an anonymous contribution of the person's own money or property, or money of another person, to any candidate, party, or committee in connection with a nomination for election, or election. No candidate, party, or committee shall knowingly receive, accept, or retain an anonymous contribution, or enter or cause such contribution to be entered in its accounts as an anonymous contribution or in a name other than the true name of the person who actually furnished the contribution.

(b) No anonymous contribution received by a candidate, party, or committee shall be used or expended, but shall be returned to the donor. If the donor cannot be identified, the contribution shall escheat to the Hawaii election campaign fund.

(c) This section shall not apply to amounts that aggregate less than \$500 when obtained through multiple contributions made by ten or more persons at the same political function. Each such aggregate contribution shall be reported accompanied by a description of the means, method, place, and date of receipt. [L 1979, c 224, pt of §2; gen ch 1985]

§11-202 False name. No person shall make a contribution of the person's own money or property, or money or property of another person to any candidate, party, or committee in connection with a nomination for election, or election, in any name other than the true name of the person who owns the money or who supplied the money or property.

All contributions made in the name of a person other than the true or established name of the actual owner of the money or property shall escheat to the Hawaii election campaign fund. [L 1979, c 224, pt of §2; gen ch 1985]

§11-203 Fundraisers and fundraising activities. (a) As used in this section, "fundraiser" means any function held for the benefit of a person that is intended or designed, directly or indirectly, to raise funds for political purposes for which the price or suggested contribution for attending the function is more than \$25 per person.

(b) There shall be no more than two fundraisers held for a person prior to a general or special election in which that person is either elected or defeated.

(c) No fundraiser or fundraising activity shall be held unless a notice of intent to hold the function is filed by the person in charge of the function with the commission prior to the date of the function setting forth the name and address of the person in charge, the price per person, the date, hour, and place of the affair and the method thereof.

(d) Fundraisers sponsored by a candidate for a statewide office are exempt from the \$25 limit of subsection (a) and the restrictions of subsection (b), and fundraisers sponsored by a party for a political purpose for the general benefit of the party are exempt from the restrictions of subsection (b). [L 1979, c 224, pt of §2; am L 1980, c 232, §1 and c 246, §1(e); gen ch 1985; am L 1987, c 369, §1(6); am L Sp 1995, c 10, §2(9); am L 1997, c 375, §7; am L 1999, c 64, §2]

Note

Section is set forth as amended by L 1999, c 64, §2. The omitted portion of subsection (b) read:

"Within six months after a general or special election, however, a candidate or committee directly associated with a candidate who has a deficit may hold an additional fundraiser."

[§11-203.5] Prohibition of fundraising on state or county property. (a) Except as provided in subsection (b), it shall be unlawful for any person to solicit a donation of money or other thing of value in connection with an election campaign in a government facility that is used for the discharge of official duties by an officer or employee of the State or county.

(b) The prohibition of fundraising on state or county property shall not apply to any government facility that permits use by nongovernmental organizations for a fee or with reservations; provided the governmental facility's use regulations do not prohibit political activities on the premises. Government facilities that permit use for political activities shall be available to a candidate or committee for fundraising activities pursuant to the same terms and conditions that would otherwise apply to use by nongovernmental organizations.

(c) A person who violates the prohibition of fundraising on state or county property shall be guilty of a misdemeanor. [L 2005, c 203, pt of §1]

§11-204 Campaign contributions; limits as to persons.

(a)(1) No person or any other entity shall make contributions to:

(A) A candidate seeking nomination or election to a two-year office or to the candidate's committee in an aggregate amount greater than \$2,000 during an election period;

(B) A candidate seeking nomination or election to a four-year statewide office or to the candidate's committee in an aggregate amount greater than \$6,000 during an election period; and

(C) A candidate seeking nomination or election to a four-year nonstatewide office or to the candidate's committee in an aggregate amount greater than \$4,000 during an election period.

These limits shall not apply to a loan made to a candidate by a financial institution in the ordinary course of business;

(2) For purposes of this section, the length of term of an office shall be the usual length of term of the office as unaffected by reapportionment, a special election to fill a

vacancy, or any other factor causing the term of the office the candidate is seeking to be less than the usual length of term of that office.

(b) No person or any other entity shall make contributions to a noncandidate committee, in an aggregate amount greater than \$1,000 in an election.

(c) A candidate's immediate family, in making contributions to the candidate's campaign, shall be exempt from the above limitation, but shall be limited in the aggregate to \$50,000 in any election period. The aggregate amount of \$50,000 shall include any loans made for campaign purposes to the candidate from the candidate's immediate family.

(d) A contribution by a dependent minor shall be reported in the name of the minor but shall be counted against the contribution of the minor's parent or guardian.

(e) Any candidate, candidate's committee, or committee that receives in the aggregate more than the applicable limits set forth in this section in any primary, initial special, special, or general election from a person, shall be required to return any excess contribution to the original donor within thirty days of receipt of the excess contribution. Any excess contribution not returned to the original donor within thirty days shall escheat to the Hawaii election campaign fund. A candidate, candidate's committee, or committee who complies with this subsection prior to the initiation of prosecution shall not be subject to any penalty under section 11-228.

(f) All payments made by a person or political party whose contributions or expenditure activity is financed, maintained, or controlled by any corporation, labor organization, association, political party, or any other person or committee, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, political party, political committees established and maintained by a national political party, or any other person, or by any group of those persons shall be considered to be made by a single person or political party.

(g) An individual and any general partnership in which the individual is a partner shall be treated as one person.

(h) No committee that supports or opposes a candidate for public office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee.

(i) No contributions or expenditures shall be made to or on behalf of a candidate or committee by a foreign national or foreign corporation, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation, and in the same manner prohibited under 2 United States Code section 441e and 11 Code of

Federal Regulations 110.20, as amended. No foreign-owned domestic corporation shall make contributions where:

(1) Foreign national individuals participate in election-related activities such as decisions concerning the making of contributions or the administration of a political committee; or

(2) The contribution funds are not domestically-derived.

(j) No person or any other entity other than political committees established and maintained by a national political party shall make contributions to a political party in an aggregate amount greater than \$25,000 in any two-year election period. No political committee established and maintained by a national political party, shall make contributions to a political party in an aggregate amount greater than \$50,000 in any two-year election period.

(k) The contribution limits under this section shall apply for the office sought by the candidate. This section shall not apply to ballot issue committees. [L 1979, c 224, pt of §2; am L 1980, c 246, §1(f); gen ch 1985; am L 1987, c 369, §1(7); am L 1988, c 403, §1; am L 1989, c 261, §1; am L Sp 1995, c 10, §2(10); am L 1997, c 375, §8; am L 1998, c 31, §1; am L 1999, c 96, §6 and c 187, §3; am L 2000, c 99, §4 and c 242, §1; am L 2005, c 203, §7]

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Subsection (b): violates First Amendment to U.S. Constitution because it restricts persons or other entities from making contributions to noncandidate ballot measure committees. Subsection (j): statutory provision prohibits contributions based upon length of time that noncandidate committee has been registered; this durational requirement is unconstitutional because it imposes limitations on the right of association and the right of expression when contributions are made to noncandidate committees. Att. Gen. Op. 98-5.

[§11-204.5] Limit on contributions from nonresident individuals and persons.

Contributions from any individual or any person as defined in section 11-191, except for a member of the candidate's immediate family, who is not a resident of the State at the time the contributions are made, including a noncandidate committee organized under the laws of another state and whose participants are not residents of the State, shall not exceed twenty per cent of the total contributions received by a candidate or candidate's committee for each reporting period. [L 2005, c 203, pt of §1]

§11-205 Campaign contributions; limits as to political parties. A contribution to a political party which is earmarked for a particular candidate or candidates shall be promptly distributed to such candidate and shall be reported by the candidate upon receipt as an individual contribution. Earmarked funds contributed pursuant to this section shall be counted:

(1) Toward the contribution limit of the political party donating such funds to a candidate or candidates; and

(2) Toward the contribution limit of the person or persons contributing such earmarked funds. [L 1979, c 224, pt of §2; am L Sp 1995, c 10, §2(11); am L 1999, c 187, §4]

§11-205.5 Campaign contributions by state and county contractors. (a) It shall be unlawful for the person who enters into any contract with the State, any of its counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing any material, supplies, or equipment to the State, any of its counties, department or agency thereof, or for selling any land or building to the State, any of its counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made in whole or in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

(1) Directly or indirectly make any contribution or to promise expressly or impliedly to make any contribution to any political party, committee, or candidate or to any person for any political purpose or use; or

(2) Knowingly solicit any contribution from any person for any purpose during any period.

(b) This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any state or national bank, corporation, or labor organization for the purpose of influencing the nomination for election or the election of any person to office; provided that the commission shall by rule establish contribution limits for limited liability companies as defined in section 428-101, limited liability partnerships as defined in section 425-101, and limited liability limited partnerships as defined in section 425E-102. Sole proprietors subject to this section shall comply with applicable campaign contribution limits in section 11-204.

(c) For purposes of this section, "completion of the contract" means that the parties to the government contract have either terminated the contract prior to completion of performance or fully performed the duties and obligations under the contract, no disputes relating to the performance and payment remain under the contract, and all disputed

claims have been adjudicated and are final. [L Sp 1995, c 10, pt of §2(1); am L 1997, c 190, §6; am L 2005, c 203, §8]

§11-205.6 Campaign contributions; loans. (a) Any loan to a candidate or candidate's committee in excess of \$100 shall be documented and disclosed as to lender, including the lender's name, address, employer, and occupation and purpose of the loan in the subsequent report to the commission. A copy of the executed loan document shall accompany the report. The document shall contain the terms of the loan, including the interest and repayment schedule. Failure to document the loan or to disclose the loan to the commission shall cause the loan to be treated as a campaign contribution, subject to all relevant provisions of this chapter.

(b) A candidate or candidate's committee may receive and accept loans in an aggregate amount not to exceed \$10,000 during an election period, provided that if the \$10,000 limit is reached, the candidate or candidate's committee shall be prohibited from receiving or accepting any other loans until the \$10,000 is repaid in full by the candidate or candidate's committee.

(c) If any loan made to a candidate is not repaid within one year of the date that the loan is made, the candidate and candidate's committee shall be prohibited from accepting any other loans, and all subsequent contributions received and any surplus retained shall only be expended toward the repayment of the outstanding loan, until the loan is repaid in full by the candidate or candidate's committee.

(d) No loan may be accepted or made by noncandidate committees.

(e) Any loan by a financial institution regulated by the State or a federally chartered depository institution and made in accordance with applicable law in the ordinary course of business, or a loan by a candidate of the candidate's own funds, or a loan from immediate family members of a candidate using their own funds to the candidate's committee shall not be deemed a contribution and not subject to the contribution limits provided in section 11-204 or the loan limit and repayment provisions of subsection (b) and (c); provided that loans from the immediate family members of the candidate shall remain subject to the provisions in section 11-204(c). [L Sp 1995, c 10, pt of §2(1); am L 1997, c 375, §9; am L 2005, c 203, §9]

§11-206 Campaign contributions; restrictions as to surplus. (a) Every candidate in a primary, special primary, special, or general election who has voluntarily agreed to abide by spending limits and who subsequently receives campaign contributions in an amount greater than the expenditure limit set for the candidate's respective office shall reserve use of these contributions until after a general or special election.

(b) Campaign contributions shall not be used for personal expenses or to qualify for public funding in any subsequent election, and shall not be transferred to another candidate as prohibited in section 11-200.

Where such contributions are used for the purchase or lease of consumer goods, vehicles, equipment, and services that provide a mixed benefit to the candidate, they shall be reported to the commission pursuant to sections 11-212 and 11-213.

(c) Surplus funds may be used after a general or special election for:

(1) Any fundraising activity;

(2) Any other politically related activity sponsored by the candidate;

(3) Any ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office; or

(4) Any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a); provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election.

(d) All contributions collected pursuant to this section shall be reportable under section 11-213. [L 1979, c 224, pt of §2; am L 1980, c 246, §1(g); am L 1985, c 206, §1; gen ch 1985; am L 1987, c 369, §1(8); am L 1997, c 375, §10; am L 2000, c 99, §5; am L 2005, c 203, §10]

§11-207 Other contributions and expenditures. (a) Expenditures or disbursements for electioneering communications as defined in section 11-207.6, or any other coordinated activity made by any person or political party for the benefit of a candidate in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's committee, or their agents, shall be considered to be a contribution to the candidate and expenditure by the candidate.

The financing by any person or political party of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's committee, or agents shall be considered to be a contribution to the candidate.

This subsection shall not apply to candidates for governor or lieutenant governor supporting a co-candidate in the general election.

(b) "Coordinated activity" means:

(1) The payment by any person in cooperation, consultation, or concert with, at the request of, or pursuant to, any general or particular understanding with a candidate,

candidate committee, the political party of a candidate, or an agent of a candidate, committee, or the political party of a candidate;

(2) The payment by any person for the production, dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign material prepared by a candidate, committee, or an agent of a candidate or committee; or

(3) Any payment by any person or contract for any electioneering communication, as defined in section 11-207.6, where the payment is coordinated with a candidate, candidate committee, the political party of the candidate, or an agent of a candidate, committee, or the political party of a candidate.

(c) No expenditure for a candidate shall be made or incurred by any committee controlled by a candidate without specific written authorization of the candidate or the candidate's authorized representative. Every expenditure so authorized and made or incurred shall be attributed to the candidate with whom the committee is directly associated for the purpose of imposing the expenditure limitations set forth in section 11-209.

(d) For the purposes of this subpart, an expenditure shall be deemed to be made or incurred when the services are rendered or the product is delivered. Services rendered or products delivered for use during a reporting period covered by this subpart shall be deemed delivered or rendered during the period or periods of use; provided that these expenditures shall be reasonably allocated between periods in accordance with the time the services or products are actually used. [L 1979, c 224, pt of §2; am L 1980, c 232, §1; gen ch 1985; am L 1998, c 31, §2; am L 1999, c 140, §2; am L 2005, c 203, §11]

[§11-207.5] Late contributions; reports. (a) Each candidate, candidate's committee, or committee, that within the period of fifteen calendar days through four calendar days prior to a primary, special primary, general, or special general election, makes contributions aggregating more than \$500, or receives contributions from any person or entity aggregating more than \$500, shall file a report with the commission or appropriate county clerk's office on forms provided by the commission, no later than 4:30 p.m., three calendar days prior to the election.

(b) The report shall include the name, address, occupation and employer of the contributor, the name of the candidate, candidate's committee, or committee receiving the contribution, the amount of the contribution, the contributor's aggregate contributions to the candidate, candidate's committee, or committee, and the purpose, if any, to which the contribution will be applied.

(c) A report filed pursuant to this section shall be in addition to any other campaign report required to be filed by this subpart. [L 1999, c 204, §1]

§11-207.6 Electioneering communications. (a) Every person who makes a disbursement for electioneering communications in an aggregate amount of \$2,000 during any calendar year shall, within twenty-four hours of each disclosure date provided in this section, file with the commission a statement of information described in subsection (b).

(b) Each statement required to be filed under this section shall contain the following information:

(1) The identification of the person making the disbursement, any entity sharing or exercising discretion or control over such person, and the custodian of the books and accounts of the person making the disbursement;

(2) The state of incorporation and principal place of business or, for an individual, the address of the person making the disbursement;

(3) The amount of each disbursement during the period covered by the statement and the identification of the person to whom the disbursement was made;

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified;

(5) If the disbursements were made by a committee, the names and addresses of all persons who contributed to the committee for the purpose of publishing or broadcasting the electioneering communications;

(6) If the disbursements were made by an organization other than a committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications; and

(7) Whether or not any electioneering communication is made in coordination, cooperation, or concert with or at the request or suggestion of any candidate, candidate committee, political party or agent of any candidate, candidate committee or political party and, if so, the identification of the candidate, candidate committee, political party, or agent involved.

(c) For the purposes of this section:

"Disclosure date" means, for every calendar year, the first date by which a person has made disbursements during that same year of more than \$2,000, in the aggregate, for electioneering communications, and the date of any subsequent disbursements by that person for electioneering communications.

"Electioneering communication" means any advertising:

(1) (A) Broadcast from a cable, satellite, television, or radio broadcast station;

(B) Published in any periodical or newspaper; or

(C) Sent by mail at a bulk rate;

(2) That refers to a clearly identifiable candidate; and

(3) Is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election.

"Electioneering communication" shall not include communications:

(1) In a news story or editorial disseminated by any broadcast station or publisher of periodicals or newspapers, unless the facilities are owned or controlled by any political party, political committee, or candidate;

(2) That constitute expenditures by the disbursing organization;

(3) In in-house bulletins; or

(4) That constitute a candidate debate or forum, or solely promote a debate or forum and are made by or on behalf of the person sponsoring the debate or forum.

(d) For purposes of this section, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement. [L 1999, c 140, §1; am L 2005, c 203, §12]

§11-208 Voluntary campaign expenditure limitation. (a) Any candidate may voluntarily agree to limit the candidate's campaign expenditures and those of the candidate's committee or committees and the candidate's party in the candidate's behalf by filing an affidavit with the campaign spending commission.

(b) The affidavit shall state that the candidate knows the voluntary campaign expenditure limitations as set out in section 11-209 and that the candidate is voluntarily agreeing to limit the candidate's expenditures and those made on the candidate's behalf by the amount set by law. The affidavit shall be subscribed to by the candidate and notarized.

(c) Affidavits in compliance with this section shall be filed by the time of filing of nomination papers with the chief election officer or county clerk. [L 1979, c 224, pt of §2; gen ch 1985; am L Sp 1995, c 10, §2(12); am L 1997, c 375, §11; am L 1999, c 64, §3]

§11-209 Campaign expenditures; limits as to amounts. (a) From January 1 of the year of any primary, special, or general election, the total expenditures for each election for candidates who voluntarily agree to limit their campaign expenditures, inclusive of all expenditures made or authorized by the candidate alone and all campaign treasurers and committees in the candidate's behalf, shall not exceed the following amounts expressed respectively multiplied by the number of voters in the last preceding general election registered to vote in each respective voting district:

- (1) For the office of governor--\$2.50;
- (2) For the office of lieutenant governor--\$1.40;
- (3) For the office of mayor--\$2.00;
- (4) For the offices of state senator, state representative, and county council member--\$1.40; and
- (5) For the offices of the board of education and all other offices--20 cents.

(b) A candidate or committee who has voluntarily agreed to the expenditure limits in this section and who exceeds their respective expenditure limits shall pay the full filing fee and shall notify all opponents, the chief election officer, and the commission by telephone and in writing the day the expenditure limits are exceeded. All contributors shall be notified within thirty days of exceeding the expenditure limits. Notification to contributors shall include an announcement that tax deductions based on their contributions are no longer available. [L 1979, c 224, pt of §2; am L 1980, c 232, §3 and c 246, §1(h); am L 1982, c 125, §1; gen ch 1985; am L 1987, c 369, §1(9); am L Sp 1995, c 10, §2(13); am L 1999, c 64, §4; am L 2005, c 203, §13]

§11-210 Study and recommendation. At least one year prior to a primary, special primary, or general election, the commission shall submit to the legislature:

- (1) A study and recommendation of reasonable campaign expenditure and contribution limits and the factors which may be relevant in their establishment; and
- (2) A report concerning the status of the Hawaii election campaign fund, and shall request an appropriation if the total amount of revenues comprising the fund is insufficient to partially finance all candidates for a particular primary, special primary, or general election as set forth in section 11-218. [L 1979, c 224, pt of §2]

§11-211 House bulletins. The costs of preparing, printing, and circulating house bulletins and the writings, drawings, and photographs contained therein, except for paid political advertisements, shall be exempt from the provisions of this subpart. [L 1979, c 224, pt of §2; am L 1980, c 232, §1]

§11-212 Preliminary reports.

(a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk's office. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the following dates:

- (A) July thirtieth of the year of the primary election;
- (B) Ten calendar days prior to each primary and initial special election; and
- (C) Ten calendar days prior to a special or general election.

(2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of other preliminary reports:

- (A) The aggregate sum of all contributions and other campaign receipts received;
- (B) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (C) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (D) All expenditures made, incurred, or authorized by or for a candidate, including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (E) A current statement of the balance on hand or deficit.

(b) Each noncandidate committee shall file a preliminary report with the commission, on forms provided by the commission, no later than 4:30 p.m. on the tenth calendar day prior to each primary election and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:

- (1) The aggregate sum of all contributions and other campaign receipts received;
 - (2) The amount and date of deposit of the contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$100 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
 - (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
 - (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
 - (5) A current statement of the balance on hand.
- (c) The candidate's committee and noncandidate committee shall itemize disbursements to consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose.
- (d) A candidate, party, or committee whose aggregate contributions and aggregate expenditures for the reporting period each total \$2,000 or less may file a short form report with the commission or appropriate county clerk's office in lieu of the reports required by this section and section 11-213.
- (e) Notwithstanding this section and section 11-213, a candidate, party, or committee whose aggregate contributions and aggregate expenditures for the election period total \$1,000 or less, need not file a preliminary and final primary report, a preliminary and final general report, or a special election report, but shall file only a final election period report. [L 1979, c 224, pt of §2; am L 1980, c 246, §1(i); am L 1987, c 369, §1(10); am L 1989, c 33, §1 and c 166, §2; am L Sp 1995, c 10, §2(14); am L 1997, c 375, §12; am L 1999, c 96, §7; am L 2001, c 55, §2; am L 2005, c 203, §14]

§11-213 Final and supplemental reports. (a) Primary and initial special election. Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary or initial special election. The report shall include the following information which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;

(2) The amount and date of deposit of each contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;

(3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;

(4) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and

(5) The cash balance and a statement of surplus or deficit.

(b) Each noncandidate committee shall file a final primary report, certified pursuant to section 11-195, with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary election. The report shall include the following information, which shall be current through the day of the primary election:

(1) A statement of the total contributions and campaign receipts received;

(2) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of more than \$100 during an election, which has not previously been reported;

(3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;

(4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and

(5) A current statement of the balance on hand.

(c) The candidate's committee and noncandidate committee shall itemize disbursements to consultants, advertising agencies and similar firms; credit card payments; salaries; and candidate reimbursements, to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose.

(d) General, special general, special election or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee

shall file a final election period general report with the commission on forms provided by the commission no later than 4:30 p.m. on the thirtieth calendar day after a general, special general, or special election. The final election period report shall be certified pursuant to section 11-195, shall report all items prescribed in subsection (a) or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election shall file a final election period report.

(e) Termination. A candidate, party, or committee may terminate registration with the commission with no surplus or no deficit. A termination report approved by the commission shall include information on the disposition of any funds, which has not previously been reported.

(f) Deficit. In the event of a deficit the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every six months until the deficit is eliminated, file supplemental reports covering all items prescribed in subsection (a) or subsection (b) in the case of noncandidate committees. The first report shall be due no later than 4:30 p.m. on the thirtieth day after the last day of the election year.

(g) Surplus. In the event of a surplus the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall:

(1) Maintain the cash surplus in a financial depository; and

(2) Every six months, until the candidate files to be on the ballot with the state office of elections, or in the case of a party or committee until they participate in an election again, file supplemental reports detailing all items prescribed in subsection (a) or in the case of a noncandidate committee until they participate in an election again, or file supplemental reports detailing all items prescribed in subsection (b).

The first report shall be due not later than 4:30 p.m. on the thirtieth calendar day after the last day of the election year.

(h) All supplemental reports required by this section shall be filed until a candidate files to be on the ballot with the state elections office. Each party or noncandidate committee shall file a supplemental report for the respective reporting period during a nonelection year. In an election year, each party and noncandidate committee shall file reports as prescribed in this section and section 11-212 for the primary and general election. [L 1979, c 224, pt of §2; am L 1980, c 232, §1 and c 246, §1(j); am L 1982, c 74, §1; gen ch 1985; am L 1987, c 369, §1(11); am L 1988, c 141, §2; am L 1989, c 166, §3; am L Sp 1995, c 10, §2(15), (16); am L 1997, c 375, §13; am L 1998, c 31, §3; am L 1999, c 96, §8; am L 2005, c 203, §15]

Duty of candidate not nominated to file statement of expenses within 20 days of primary election. 55 H. 610, 525 P.2d 586.

§11-214 Disposition of funds. (a) Candidates, committees, and individuals who receive contributions for an election but fail to file a nomination for that election shall return all residual funds to the donors no later than ninety days after the date on which nominations for that election must be filed. Contributions not returned to the donors shall escheat to the Hawaii election campaign fund.

(b) Candidates, committees, and individuals who withdraw or cease to be candidates or committees because of death, term limits, disqualification, resignation, or other personal reasons shall return all residual funds to the donors no later than ninety days after the candidate or committee ceases to be a candidate or committee. Residual funds not returned to the donors shall escheat to the Hawaii election campaign fund. Contributions shall only be used for expenditures directly related to the candidate's or committee's activities to influence the outcome of the election or nomination for election.

(c) Candidates, and the committees of a candidate who:

(1) Are elected to office, may expend surplus funds pursuant to section 11-206, but under no circumstances shall expenditures be made from funds after four years from the date of the election for which the contributions were received; or

(2) Fail to be nominated or elected to office, may expend surplus funds pursuant to section 11-206 but under no circumstances shall expenditures be made from funds after one year from the date of the election for which the contributions were received.

Contributions not returned to the donors shall escheat to the Hawaii election campaign fund.

(d) Surplus funds may be expended by a candidate for the next subsequent election upon registration for the election pursuant to section 11-194.

(e) Candidates or committees that dispose of funds pursuant to this section shall terminate registration with the commission as provided in section 11-213.

(f) The commission shall adopt rules under chapter 91 for carrying out the purposes of this section. [L 1979, c 224, pt of §2; am L 1980, c 232, §1; am L Sp 1995, c 10, §2(17); am L 1997, c 375, §14; am L 1998, c 31, §4; am L 2000, c 242, §2; am L 2005, c 203, §16]

§11-215 Advertising. (a) All advertisements shall contain the name and address of the candidate, committee, party, or person paying for the advertisement. If an advertisement is not authorized by a candidate or a candidate's committee, the advertisement shall contain the name and address of the person paying for the advertisement.

(b) In addition to subsection (a), no candidate or committee shall cause or submit any advertisement in support of a candidate, against a candidate's opponent, or with regard to a ballot issue to be published, broadcast, televised, or otherwise circulated and distributed except under the following conditions:

(1) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated with the approval and authority of the candidate, provided that in the event that the literature or advertisement is paid for by a candidate, committee directly associated with a candidate, or ballot issue committee, the notice of approval and authority need not be included; or

(2) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated without the approval and authority of the candidate.

(c) The penalty for violating this section shall be a fine not to exceed \$25 for each advertisement that lacks the required disclaimer and no more than \$5,000 aggregate. [L 1979, c 224, pt of §2; am L 1987, c 369, §1(12); am L Sp 1995, c 10, §2(18); am L 1999, c 96, §9]

§11-216 Complaints, investigation, and notice; determination. (a) Complaints of violations of this subpart against any person shall be filed with the commission. The complaint shall be in writing and shall be signed under oath by the complainant. Complaints initiated by the commission shall be in writing and signed by the executive director.

(b) The commission shall give notice of receipt of the complaint together with a copy of the complaint to the person cited and shall afford the person an opportunity to explain or otherwise respond to the complaint at a meeting promptly noticed by the commission and conducted under chapter 92. The commission shall promptly determine, without regard to chapter 91, to summarily dismiss the complaint, cause further investigation, make a preliminary determination, or refer the complaint to an appropriate prosecuting authority for prosecution under section 11-229.

(c) Upon hearing the response of the person cited, if the person elects to respond to the complaint, and upon completion of any investigation, the commission may make a prompt preliminary determination as to whether probable cause exists that a violation of this subpart has been committed. In lieu of an administrative determination that a violation of this section has been committed, the commission may refer the complaint to

the attorney general or county prosecutor pursuant to section 11-229 at any time it believes that the person cited may have intentionally, knowingly, or recklessly committed a violation.

(d) If the commission makes a preliminary determination that there is probable cause to believe that a violation of this subpart has been committed, its preliminary determination with findings of fact and conclusions of law shall be served upon the person cited by certified mail. The person shall be afforded an opportunity to contest the commission's preliminary determination of probable cause by making a request for a contested hearing under chapter 91 within twenty days of receipt of the preliminary determination. Failure to request a contested hearing will result in the commission's preliminary determination being deemed a final determination of violation.

(1) Any person who appears before the commission shall have all of the rights, privileges, and responsibilities of a witness appearing before the courts of this State. All witnesses summoned before the commission shall receive reimbursements as paid in like circumstances in the courts of this State. Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby, may appear personally before the commission on the person's own behalf or file a written statement for incorporation into the record of the proceeding.

(2) The commission shall cause a record to be made of all proceedings pursuant to this subsection. Any hearing conducted by the commission to contest the preliminary determination of probable cause shall be conducted pursuant to chapter 91 and any rules adopted by the commission. All contested hearings shall be heard before the commission or a duly designated hearings officer.

(3) All parties shall be afforded full opportunity to present evidence and argument on all issues involved. The commission or hearings officer, if there is no dispute as to the facts involved in a particular matter, may permit the parties to proceed by memoranda of law in lieu of a hearing unless the procedure would unduly burden any party or is otherwise not conducive to the ends of justice. The commission shall not be bound by strict rules of evidence when conducting a hearing to determine whether a violation of this subpart has occurred, and the degree or quantum of proof required shall be a preponderance of the evidence.

(4) A hearings officer shall render a recommended decision for the commission's consideration and any party adversely affected by the decision may file written exceptions with the commission within fifteen days after receipt of a copy of the decision by certified mail.

(5) The commission, as expeditiously as possible, after the close of the hearing, shall issue its final determination of violation together with separate findings of fact and conclusions of law regarding whether a violation of this subpart has been committed.

(e) In the event the commission makes a final determination that a violation of this subpart does not exist, the complaint shall be dismissed.

(f) If the commission renders a final determination of violation, its written decision with findings of fact and conclusions of law may also provide, without limitation the following orders:

- (1) The return of any contribution;
- (2) The reimbursement of any unauthorized expenditure;
- (3) The payment of any administrative fine payable to the Hawaii election campaign fund;
- (4) Cease and desist violation of this subpart; or
- (5) File any report, statement, or other information as required by this subpart.

(g) The commission may waive further proceedings because of action the person cited or respondent takes to remedy or correct the alleged violation, including the payment of any administrative fine. The commission shall make the remedial or corrective action taken by the respondent, the commission's decision in light of the action to waive further proceedings, and the commission's justification for its decision, a part of the public record. [L 1979, c 224, pt of §2; am L 1980, c 232, §1; gen ch 1985; am L 1987, c 369, §1(13); am L 1988, c 141, §3; am L 1989, c 138, §2; gen ch 1993; am L Sp 1995, c 10, §2(19) and c 27, §§7, 15; am L 1999, c 96, §12 and c 141, §3]

Case Notes

Subsection (d)'s prohibition on complainant publicly disclosing that complaint was filed with campaign spending commission and on other disclosures by third parties unconstitutionally overbroad. 30 F.3d 1115.

To the extent that an individual is prevented from disclosing that the individual filed a complaint with the campaign spending commission, subsection (d) is an unconstitutional restriction on free speech. 30 F.3d 1115.

§11-217 Hawaii election campaign fund; creation. The Hawaii election campaign fund is created as a trust fund within the state treasury. The fund shall consist of all moneys collected from persons who have designated a portion of their income tax liability to the fund as provided in section 235-102.5, any general fund revenues appropriated, as well as all other moneys collected pursuant to this subpart. Payment to

each candidate from the fund shall be by the comptroller in the manner prescribed in section 11-222. Moneys from this fund may also be used for the operating expenses of the commission, including staff salaries and fringe benefits. [L 1979, c 224, pt of §2; am L 1980, c 232, §1; am L Sp 1995, c 10, §2(20); am L 1997, c 375, §15; am L 1998, c 50, §1]

§11-217.5 Depletion of fund. (a) The Hawaii election campaign fund shall be under no obligation to provide moneys to qualified candidates in the event that moneys in that fund have been depleted.

(b) In the event that the Hawaii election campaign fund is close to depletion, as determined by the commission, the commission shall determine the amounts available to qualified candidates based on their order of eligibility in qualifying for public funds, as determined by the date of filing of an application for public funds with the commission pursuant to section 11-222; provided that the application has been accepted by the commission. [L 1994, c 167, §1; am L 1999, c 64, §5]

§11-218 Candidate funding; amounts available. (a) For the office of governor, lieutenant governor, or mayor, the maximum amount of public funds available to a candidate in any election shall not exceed ten per cent of the total expenditure limit as determined under section 11-209 for each election for each office listed in this subsection.

(b) For the office of state senator, state representative, county council member, and prosecuting attorney, the maximum amount of public funds available to a candidate in any election shall be fifteen per cent of the total expenditure limit as determined under section 11-209 for each election for each office listed in this subsection.

(c) For the office of Hawaiian affairs, the maximum amount of public funds available to a candidate shall not exceed \$1,500 in any election year.

(d) For the board of education and all other offices, the maximum amount of public funds available to a candidate shall not exceed \$100 in any election year.

(e) Each candidate who qualified for the maximum amount of public funding in any primary election and who is a candidate for a subsequent general election shall apply with the commission to be qualified to receive the maximum amount of public funds as provided in this section for the respective election. For purposes of this section, "qualified" means meeting the qualifying campaign contribution requirements of section 11-219. [L 1979, c 224, pt of §2; am L 1989, c 120, §§2, 6; am L 1990, c 34, §1; am L Sp 1995, c 10, §2(21); am L 1998, c 31, §5; am L 1999, c 64, §6; am L 2000, c 99, §6; am L 2005, c 203, §17]

§11-219 Qualifying campaign contributions; amounts. As a condition of receiving public funds for a primary or general election, a candidate shall not be unopposed in any election for which public funds are sought, shall have filed an affidavit with the commission pursuant to section 11-208 to voluntarily limit the candidate's campaign expenditures, and shall be in receipt of the following sum of qualifying campaign contributions from individual residents of Hawaii:

(1) For the office of governor--qualifying contributions that in the aggregate, exceed \$100,000;

(2) For the office of lieutenant governor--qualifying contributions that in the aggregate, exceed \$50,000;

(3) For the office of mayor for each respective county:

(A) County of Honolulu--qualifying contributions that in the aggregate, exceed \$50,000;

(B) County of Hawaii--qualifying contributions that in the aggregate, exceed \$15,000;

(C) County of Maui--qualifying contributions that in the aggregate, exceed \$10,000; and

(D) County of Kauai--qualifying contributions that in the aggregate, exceed \$5,000; and

(4) For the office of prosecuting attorney for each respective county:

(A) County of Honolulu--qualifying contributions that in the aggregate, exceed \$30,000;

(B) County of Hawaii--qualifying contributions that in the aggregate, exceed \$10,000; and

(C) County of Kauai--qualifying contributions that in the aggregate, exceed \$5,000;

(5) For the office of county council--for each respective county:

(A) County of Honolulu--qualifying contributions that in the aggregate, exceed \$5,000;

(B) County of Hawaii--qualifying contributions that in the aggregate, exceed \$1,500;

(C) County of Maui--qualifying contributions that in the aggregate, exceed \$5,000; and

(D) County of Kauai--qualifying contributions that in the aggregate, exceed \$3,000;

(6) For the office of state senator--qualifying contributions that, in the aggregate, exceed \$2,500;

(7) For the office of state representative--qualifying contributions that, in the aggregate, exceed \$1,500;

(8) For the office of Hawaiian affairs--qualifying contributions that, in the aggregate, exceed \$1,500; and

(9) For all other offices, qualifying contributions that, in the aggregate, exceed \$500. [L 1979, c 224, pt of §2; gen ch 1985; am L 1987, c 369, §1(14); am L 1989, c 120, §§4, 6; am L Sp 1995, c 10, §2(22); am L 1997, c 375, §16; am L 1999, c 64, §7; am L 2005, c 203, §18]

§11-220 Eligibility for payments. (a) To be eligible to receive payments under section 11-217, a candidate shall in writing:

(1) Agree to obtain and furnish to the commission any evidence of the campaign expenses of such candidate which the commission may request;

(2) Agree to keep and furnish records, books, and other information which the commission may request; and

(3) Agree to an audit and examination by the commission under section 11-225 and to pay any amounts required to be paid pursuant to that section.

(b) To be eligible to receive payments pursuant to section 11-217, a candidate shall certify to the commission that:

(1) The candidate and all committees authorized by the candidate shall not incur campaign expenses in excess of the expenditure limitations imposed by section 11-209;

(2) The candidate has qualified to be on the election ballot in a primary or general election;

(3) The candidate has filed a statement of intent to seek qualifying contributions. A contribution received before the filing of a statement of intent to seek public funds shall not be considered a qualifying contribution;

(4) The candidate or committee authorized by the candidate has received the qualifying sum of private contributions for the office sought by the candidate as set forth in section 11-219; and

(5) The aggregate of contributions certified with respect to any person under paragraph (4) does not exceed \$100.

(c) Each candidate and candidate's committee in receipt of qualifying campaign contributions which may be taken into account for purposes of public funding shall maintain, on a form prescribed by the commission, records which show the date and amount of each qualifying campaign contribution and the full name and mailing address of the person making the contribution. The candidate and all committees authorized by the candidate shall transmit to the commission all reports with respect to these contributions that the commission may require. [L 1979, c 224, pt of §2; am L 1987, c 369, §1(15); am L 2005, c 203, §19]

§11-221 Entitlement to payments. (a) A candidate shall obtain the minimum amount of qualifying contributions set forth in section 11-219, once for the election period. After the candidate obtains the minimum amount of qualifying campaign contributions, the candidate shall be entitled to receive for each election that the candidate's name appears on the ballot:

(1) The minimum payment in an amount equal to the qualifying campaign contributions; and

(2) Payments of \$1 for each \$1 of qualifying contributions in excess of the minimum amount of qualifying contributions;

provided that the candidate shall not receive more than the maximum amount of public funds available to a candidate pursuant to section 11-218; provided further that the candidate shall not receive public funds for a primary election if the candidate does not obtain the minimum amount of qualifying contributions before the date of the primary election.

(b) A candidate shall have at least one other qualified candidate as an opponent for the primary or general election to receive public funds for that election. [L 1979, c 224, pt of §2; gen ch 1985; am L 1989, c 120, §§3, 6; am L Sp 1995, c 10, §2(23); am L 1997, c 375, §17; am L 2005, c 203, §20]

§11-222 Candidate funding; application. (a) Application forms for public funds shall be adopted by the commission and shall provide for a sworn statement by the candidate that the candidate has established eligibility under section 11-220 to receive payments under section 11-217. Each application shall be accompanied by a qualifying campaign contribution statement or statements, and shall be filed with the commission no later than thirty days after the general election. Upon approval by the commission of the application and qualifying contribution statement, the commission shall direct the

comptroller to distribute matching public funds up to the maximum of the amount of public funds to which the candidate is entitled.

Public funds shall be distributed by the comptroller to each eligible candidate within twenty days from the date of the candidate's initial application with the commission.

(b) Each candidate in receipt of the qualifying sum of contributions established for the candidate's office may apply to the commission for public funding after the candidate has become a candidate in a primary or general election.

(c) The commission shall make additional certifications within two weeks after receiving an application and supplemental contribution statement from an eligible candidate who requests additional public funding pursuant to section 11-221.

(d) Initial certification by the commission under subsection (a) and all determinations made by the commission under this section are final and conclusive, except to the extent they are subject to examination and audit by the commission under section 11-225. [L 1979, c 224, pt of §2; gen ch 1985; am L 1987, c 369, §1(16); am L Sp 1995, c 10, §2(24); am L 1999, c 64, §8; am L 2005, c 203, §21]

§11-223 Candidate funding; restrictions. (a) Each candidate who accepts public campaign funds under this subpart shall be required to abide by the campaign spending limits for the candidate's respective office as set forth in section 11-209. Any candidate who exceeds the spending limits for the candidate's respective office as set forth in section 11-209 shall immediately return all of the public campaign funds the candidate has received to the Hawaii election campaign fund.

(b) Public campaign funds provided under this subpart shall only be used to:

(1) Defray campaign expenses incurred by and paid for an eligible candidate or all committees authorized by such candidate; and

(2) Repay loans, the proceeds of which were used to defray campaign expenses.

(c) No candidate or committee authorized by a candidate shall be entitled to receive any public funds under this subpart unless the candidate has qualified to have the candidate's name on the election ballot in the election for which funds are sought.

(d) In no event shall any candidate or campaign treasurer in receipt of public campaign funds transfer any portion of such funds to another candidate for any primary, special primary, special, or general election campaign.

(e) All public funds received under this subpart shall be deposited in a financial institution designated to do business in the State. No expenditures of any public funds received under this subpart shall be made except by checks drawn on such checking

account. The commission may require such reports relating to the expenditure of such funds as it considers appropriate.

(f) Each candidate, on the deadline for filing of a final report for any primary or general election, shall return all unexpended public funds to the Hawaii election campaign fund. [L 1979, c 224, pt of §2; am L 1980, c 232, §1 and c 246, §1(k); gen ch 1985; am L 1987, c 369, §1(17); am L Sp 1995, c 10, §2(25); am L 1999, c 64, §9; am L 2005, c 203, §22]

§11-224 Public funds; report required; return of funds. The campaign treasurer of the candidate shall produce evidence to the commission no later than twenty days after a primary election and no later than thirty days after a general election that all public funds paid to the candidate have been used as required by this subpart.

Should the commission determine that any part of the public funds have been used for noncampaign or improper expenses, it shall report such finding to the attorney general and shall order the candidate to return all or part of the funds paid to that candidate for a primary or general election. When public funds are returned, they shall be deposited in the Hawaii election campaign fund. [L 1979, c 224, pt of §2; am L 1980, c 232, §1; am L 1987, c 369, §1(18); am L 2005, c 203, §23]

§11-225 Public funds; examination and audit; payments. (a) Within sixty days after each general election, the commission shall conduct an examination and audit of all public funds received by the candidate and of the campaign contributions used for purposes of qualifying for public funding under this subpart and the campaign expenses incurred by all candidates who received payments pursuant to section 11-217.

(b) The campaign spending commission shall issue, prior to the payment of any public money, rules which detail which expenses and evidence thereof qualify as acceptable campaign expenses for purposes of this section.

(c) Should the commission determine that any payment of public funds made to an eligible candidate pursuant to section 11-221 was in excess of the aggregate amount of payments to which such candidate was entitled, the commission shall notify such candidate and such candidate shall pay to the Hawaii election campaign fund a sum equal to the amount of excess payment.

(d) If the commission determines that any amount of any public funds made to a candidate under section 11-217 was used for any improper purpose, the commission shall so notify the candidate, and the candidate shall pay to the fund an amount equal to three hundred per cent of such amount.

(e) Any candidate who has received public funds under section 11-217 and who is convicted of violating any provision of this subpart shall, upon notification by the

commission, pay to the Hawaii election campaign fund the full amount of public funds received by such candidate.

(f) No notification shall be made by the commission under subsection (c) with respect to the payment of excess public funds more than two years after the payment of such funds. [L 1979, c 224, pt of §2; am L 1980, c 232, §1]

§11-226 Tax deductions. (a) As a condition of allowing an individual to take a tax deduction for campaign contributions to a candidate pursuant to section 235-7(g)(2), a candidate shall have filed an affidavit with the commission prior to or simultaneous with the filing of the candidate's organizational report stating that the candidate shall not exceed the expenditure limit for the candidate's respective office as set forth in section 11-209.

(b) The affidavit shall remain effective until the termination of the central committee of the candidate or the opening of filing for the next succeeding election for the office held or sought at the time of filing of the affidavit whichever occurs first. An affidavit filed under this section may not be rescinded.

(c) The director of taxation shall not allow any individual or married couple filing jointly to take a deduction against any tax due, pursuant to section 235-7(g)(2), for any contribution to a candidate for statewide or county office, who has not filed an affidavit as provided in this section.

(d) The commission shall forward a certified copy of any affidavit filed under this section to the director of taxation.

(e) The director of taxation shall only allow an individual or married couple filing jointly to take an income tax deduction, pursuant to section 235-7(g)(2), for any contribution to a candidate for a statewide or county office, if a receipt is attached to the state income tax return. Canceled checks or copies of the same shall be considered adequate receipt forms.

(f) If a candidate has not filed an affidavit pursuant to this section, the candidate shall inform all contributors to the candidate's campaign in writing immediately upon receipt of the contribution that they are not entitled to count their contributions to the candidate for purposes of taking a tax deduction under this section. [L 1979, c 224, pt of §2; am L 1981, c 178, §1; gen ch 1985]

§11-227 Public notices. (a) Forty-five days before each primary, special primary, special, or general election, and at such other times as may be appropriate, the commission may give public notices to communicate to the public the following:

(1) A candidate who has signed an affidavit pursuant to section 11-208 to abide by the expenditure limits for the candidate's respective office as imposed by this subpart;

(2) A candidate who has filed an affidavit to abide by spending limits, but who has exceeded the expenditure limits pursuant to section 11-209;

(3) A candidate who has failed to file a report required under this subpart, or who has failed to correct a deficient report after notice of the deficiency or failure to file has been mailed to the candidate pursuant to section 11-193(a)(5); and

(4) Any flagrant violation of any other provision of this subpart.

(b) In giving public notice under this section, the commission shall endeavor to bring fair public light to the incident or violation involved. [L 1979, c 224, pt of §2; am L 1980, c 232, §1; gen ch 1985; am L 1987, c 369, §1(19); am L Sp 1995, c 10, §2(26); am L 1998, c 2, §6]

§11-228 Administrative fines; relief. (a) In the performance of its required duties, the commission may render a decision or issue an order affecting any person violating any provision of this subpart or section 281-22 that shall provide for the assessment of an administrative fine in the manner prescribed as follows:

(1) If a natural person, an amount not to exceed \$1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure, whichever is greater; or

(2) If a corporation, organization, association, or labor union, it shall be punished by a fine not exceeding \$1,000 for each occurrence; and

(3) Whenever a corporation, organization, association, or labor union violates this subpart, the violation shall be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, association, or labor union, who have knowingly authorized, ordered, or done any of the acts constituting the violation.

(b) Any order for the assessment of an administrative fine may not be issued against a person without providing the person written notice and an opportunity to be heard at a hearing conducted under chapter 91. A person may waive these rights by written stipulation or consent. If an administrative fine is imposed upon a candidate, the commission may order that the fine, or any portion, be paid from the candidate's personal funds.

(c) If an order issued by the commission is not complied with by the person to whom it is directed, the first circuit court, upon application of the commission, shall issue an order requiring the person to comply with the commission's order. Failure to obey such a court order shall be punished as contempt.

(d) Any administrative fine collected by the commission shall be deposited in the Hawaii election campaign fund.

(e) Any person or the commission may sue for injunctive relief to compel compliance with this subpart.

(f) The provisions of this section shall not be construed to prohibit prosecution under any appropriate provision of the Hawaii Penal Code or section 11-229.

(g) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections 11-193(a)(5) and 11-215(c). [L 1979, c 224, pt of §2; am L 1980, c 232, §1; gen ch 1985; am L Sp 1995, c 10, §2(27); am L 1999, c 96, §10; am L 2000, c 99, §7; am L 2002, c 111, §2]

§11-229 Criminal prosecution. (a) Any person who knowingly, intentionally, or recklessly violates any provision of this subpart shall be guilty of a misdemeanor. Any person who knowingly or intentionally falsifies any report required by this subpart with the intent to circumvent the law or deceive the commission or who violates section 11-201 or 11-202 shall be guilty of a class C felony. A person charged with a class C felony shall not be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853. A person who is convicted under this section shall be disqualified from holding elective public office for a period of four years from the date of conviction.

(b) For purposes of prosecution for violation of this subpart, the offices of the attorney general and the prosecuting attorney of the respective counties shall be deemed to have concurrent jurisdiction to be exercised as follows:

(1) Prosecution shall commence with a written request from the commission or upon the issuance of an order of the court; provided that prosecution may commence prior to any proceeding initiated by the commission or final determination;

(2) In the case of state offices, parties, or issues, the attorney general or the prosecuting attorney for the city and county of Honolulu shall prosecute any violation; and

(3) In the case of all other offices, parties, or issues, the attorney general or the prosecuting attorney for the respective county shall prosecute any violation.

In the commission's choice of prosecuting agency, it shall be guided by whether there will be any conflicting interest between the agency and its appointive authority.

(c) The court shall give priority to the expeditious processing of suits under this section.

(d) Prosecution for violation of any provision of this subpart shall not be commenced after five years have elapsed from the date of the violation or date of filing of the report covering the period in which the violation occurred, whichever is later.

(e) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections 11-193(a)(5) and 11-215(c). [L 1979, c 224, pt of §2; am L 1980, c 232, §1; am L Sp 1995, c 10, §2(28); am L 1999, c 96, §11; am L 2000, c 99, §8; am L 2005, c 203, §24]

Case Notes

When limitations period begins to run for alleged illegal contribution. 68 H. 270, 711 P.2d 727.